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**Supreme Court of the United States**

**OCTOBER TERM, 1950**

**No. 486**

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**PANHANDLE EASTERN PIPE LINE COMPANY,  
APPELLANT,**

**vs.**

**MICHIGAN PUBLIC SERVICE COMMISSION AND  
MICHIGAN CONSOLIDATED GAS COMPANY**

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**APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN**

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**FILED JANUARY 9, 1951.**



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MICHIGAN PUBLIC SERVICE COMMISSION AND  
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[fol. 1] **IN SUPREME COURT OF MICHIGAN**

Appeal from the Circuit Court for the County of Ingham,  
In Chancery

Honorable Paul G. Eger, Circuit Judge

No. —

**PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff and  
Appellee**

v.

**MICHIGAN PUBLIC SERVICE COMMISSION, Defendant and  
Appellant,**

**MICHIGAN CONSOLIDATED GAS COMPANY, Intervenor and  
Appellant**

Record on Appeal

[fol. 2] **IN CIRCUIT COURT OF INGHAM COUNTY**

**PLAINTIFF'S BILL OF COMPLAINT—Filed March 15, 1946**

Now comes Panhandle Eastern Pipe Line Company, a Delaware corporation, by Clayton F. Jennings, one of its attorneys, pursuant to Section 11042, Compiled Laws, 1929 (M.S.A. 22.45), as amended by Act 261, Public Acts of 1939, and represents unto this Court that:

1. Plaintiff is a corporation organized and existing under the laws of the State of Delaware, and duly authorized to do business in the State of Michigan. It has its principal executive offices at 1221 Baltimore Avenue, Kansas City 6, Missouri, and 135 S. LaSalle Street, Chicago 3, Illinois. The present statutory office of plaintiff in Michigan is 1400 Olds Tower Building, Lansing 8, Michigan, and it also maintains an office in the United Artists Building in Detroit, Michigan. None of the books of account or operating records of plaintiff are, or have at any time been, kept at said statutory office in Michigan, or at any other office or place in Michigan. All such books of account and operating records pertaining to its business are kept and maintained at one or the other of its aforesaid principal executive offices outside the State of Michigan. All of the operations

and business of plaintiff, including its operations and business in the State of Michigan, are directed, managed and controlled from the aforesaid principal executive offices outside of the State of Michigan.

2. Plaintiff owns and operates pipe lines extending from Amarillo gas field in Texas and the Hugoton gas field in [fol. 3] Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio and into Michigan, in which it transmits natural gas produced or purchased by it in Texas, Kansas and Oklahoma, and sells the same principally to local distributing companies in the States of Michigan, Ohio, Indiana, Illinois, Missouri and Kansas, and sells also to industrial consumers in said states, including two industrial consumers in the State of Michigan, namely, the Albion Malleable Iron Company, at Albion, Michigan and the Michigan Seamless Tube Company, at South Lyons, Michigan, on an interruptible basis, gas for consumption at their plants. Said pipe line is 1,160 miles in length to Melvindale, Michigan. From said main transmission line, lateral or branch lines extend to interconnections with gas lines of various distributing companies and to the two industrial plants above referred to. The plaintiff neither produces nor purchases any of such gas in the State of Michigan.

3. In 1941 plaintiff constructed a lateral line from the main transmission line of Michigan Gas Transmission Corporation into the County of Washtenaw, Michigan, and two branches extended therefrom, one to Zilwaukee, in the eastern side of the state, and one to Kalamazoo, in the western side of the state. In 1943 plaintiff, by purchase of the properties of the Michigan Gas Transmission Corporation (a wholly owned subsidiary after February 6, 1942) extended its main transmission pipe line into the State of Michigan. As to all the pipe lines built in the State of Michigan, approval of the Michigan Public Service Commission was obtained pursuant to Act 9, Public Acts of 1929. Proof was received as to laying the pipe and the manner of crossing highways and other public properties (thereby [fol. 4] fully complying with the police powers of the state, the defendant's only right to regulate being only insofar as the police powers reserved to the state were involved).

4. Plaintiff does not sell gas generally to the public and never has held itself out as a common purchaser, a common carrier or a public utility. All of its sales to local distribu-

ting companies for resale and to the two industrial consumers are made under special individual contracts. It has no charter power to act as a public utility, and is authorized to do business in Michigan only as a private corporation and not as a public utility.

5. Local distributing companies are supplied with natural gas by means of laterals running off of plaintiff's main pipe lines. Such gas is reduced in pressure by facilities owned by plaintiff before entering such laterals, and in making deliveries thereof to such distributing companies, plaintiff maintains regulators at its town border metering stations, and before such delivery reduced the pressure of such gas to such pressure as the distributing companies desire to meet operating conditions in their respective systems. It has never sold, and does not sell, in the State of Michigan any gas to residential or commercial consumers as such.

6. One of the plaintiff's customers in Michigan is the Michigan Consolidated Gas Company, located in the City of Detroit, Michigan, which is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic consumption and industrial use within the State of Michigan under a rate schedule filed with the Federal Power Commission, designated FPC Rate Schedule 12, as supplemented by 5 supplements thereto, and which purchases gas from plaintiff for resale in the Detroit area. [fol. 5] 7. A portion of the transmission line owned by plaintiff crosses property owned by the Ford Motor Company at Dearborn, Michigan.

8. The Michigan Consolidated Gas Company furnishes natural gas to the Ford Motor Company under a contract calling for maximum delivery of 15,000,000 cubic feet of gas per day. (Prior to August 20, 1945, the Ford Motor Company solicited a contract with the Michigan Consolidated Gas Company to purchase a maximum of 50,000,000 cubic feet of gas per day. The Michigan Consolidated Gas Company refused to enter into such a contract claiming it could only supply a maximum of 15,000,000 cubic feet daily for the reason that it was at the same time furnishing 10,000,000 cubic feet of gas daily to the Great Lakes Steel Corporation). Ford Motor Company then approached Panhandle Eastern Pipe Line Company and solicited from it a contract for the furnishing of its requirements of natural gas over and above that which could be furnished by Michi-



gan Consolidated Gas Company. After negotiations between the parties, a contract dated August 20, 1945, and executed by the officers of Ford Motor Company on September 18, 1945, and by officers of plaintiff on October 20, 1945, was entered into, whereby Ford Motor Company agreed to buy, and plaintiff agreed to sell, 50,000,000 cubic feet of natural gas daily under certain conditions on an interruptible basis. A copy of said contract is attached hereto, made a part hereof, and marked "Exhibit A." The plaintiff did not agree to construct any new facilities other than a metering and regulator station upon its interstate transmission line through which it was to furnish natural gas to Ford Motor Company. The Ford Motor Company agreed to construct pipe lines and other facilities to make connections with the [fol. 6] main transmission line of the plaintiff so that it might be furnished with its requirements of natural gas for manufacturing purposes.

9. On December 18, 1945 Michigan Consolidated Gas Company filed a complaint with the Michigan Public Service Commission of the State of Michigan against the plaintiff, claiming that the plaintiff had adopted the policy of making direct sales to ultimate industrial consumers, and in keeping with such policy held itself out as being willing and ready to supply natural gas to any industrial customers similarly situated as is the Ford Motor Company in the neighborhood of plaintiff's transmission lines. The defendant thereupon wrote a letter to the plaintiff threatening to take action against the plaintiff as it might be able to prevent the plaintiff from furnishing to Ford Motor Company natural gas. A copy of said letter is attached hereto, made a part hereof, and marked "Exhibit B."

10. Thereafter, on December 21, 1945, the Michigan Public Service Commission ordered plaintiff to appear in Washington, D. C. on January 7, 1946, and then and there to show cause why it should not enter an order against plaintiff to cease and desist from making direct sales of natural gas to the ultimate consumer within the State of Michigan, and more particularly in the territory being served by Michigan Consolidated Gas Company. The hearing was not to be upon the complaint of Michigan Consolidated Gas Company but upon complaint made by the defendant herein. Because of want of venue, and the plaintiff refusing to consent to venue in the District of Columbia, counsel for the plaintiff was served by mail with a notice of the adjourn-

ment of the hearing previously noticed for January 7, 1946 [fol. 7] at Washington, D. C., to January 17, 1946 at the Hotel Fort Shelby in the City of Detroit, Michigan.

11. At the time and place of the adjourned hearing, plaintiff appeared specially and moved to dismiss the proceedings upon the ground that the defendant lacked jurisdiction. A copy of said special appearance is attached hereto, made a part hereof, and marked "Exhibit C." A copy of said motion to dismiss is attached hereto, made a part hereof, and marked "Exhibit D." A ruling upon the motion was deferred by the defendant until such time as the Commission should have heard the testimony of the parties, defendant claiming it was necessary to know the facts before it could pass upon the motion to dismiss.

12. The Commission, saving to the plaintiff every benefit of its special appearance should it elect to participate further and offer testimony, suggested that the parties stipulate the essential facts, and accordingly said facts were stipulated and filed with the Commission. The plaintiff at no time has entered a general appearance in the cause, and has insisted throughout the proceedings before the Commission that it was appearing only specially and only for the purposes of its motion.

13. On February 21, 1945 the plaintiff received an opinion and purported order from the defendant in which it held that the plaintiff was a public utility, that it was engaged in intrastate business and local business, and that, therefore, it was subject to the jurisdiction of the Commission by virtue of Act 3, Public Acts of 1939, and also in disregard of the status of the cause upon the pleadings, proceeded to make a determination on the merits [fol. 8] and ordered the plaintiff to cease and desist from making direct sales and delivery of natural gas to industries within the State of Michigan located within municipalities already being served by a public utility until such time as it should first obtain a certificate of public convenience and necessity from the defendant to perform such service. A copy of said opinion and order is attached hereto, made a part hereof, and marked "Exhibit E."

14. The unreasonable and unlawful order of the Michigan Public Service Commission is in direct and open violation of the laws of the United States and the statutes

and practices of the State of Michigan, the Constitution of the United States, and the rights of the plaintiff; it is in violation of the Commerce Clause of the Federal Constitution (Article I, Section 8(3)), and it results in the taking of plaintiff's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, and Section 16 of Article II of the Constitution of the State of Michigan. With further reference to said order, plaintiff says:

(a) No franchise, permit or certificate of authority from the State of Michigan authorizing the sale and delivery of natural gas to any industrial consumer in interstate commerce has been or can lawfully be required by it from the State of Michigan or any agency thereof. Such sales and deliveries at all times have been and will continue to be component parts of interstate commerce, and neither the State of Michigan nor the Michigan Public Service Commission has any right, power or authority to require plaintiff to obtain or to attempt to obtain any such franchise, [fol. 9] certificate or permit in order to sell and deliver such gas. Any attempt on the part of defendant to require such franchise, certificate or permit or to interfere with the business of plaintiff because of the lack of such franchise, certificate or permit is unauthorized by the laws of the State of Michigan, and if any statute of such State is construed to purport to authorize the same, such statute as so construed to apply to the business of plaintiff is invalid as contrary to Article I, Section 8(3) of the Constitution of the United States.

(b) Plaintiff has at no time filed or had on file with or approved by the Michigan Public Service Commission any schedule of rates, rules and regulations covering sales of natural gas by it to consumers in the State of Michigan. No valid law of the State of Michigan requires the filing with or approval by said Commission of any schedule of rates, rules or regulations covering the direct sale of natural gas in interstate commerce to industrial consumers in Michigan, and any statute construed to purport to require such filing or approval would, if applied to the business of plaintiff, unlawfully regulate and burden



interstate commerce contrary to Article 1, Section 8(3) of the Constitution of the United States.

(c) Plaintiff has not purported to keep books, accounts, papers or records in the manner required under the regulations of the Michigan Public Service Commission for public utilities subject to the jurisdiction thereof, and is not required by any valid law of the State of Michigan so to keep its records pertaining solely to transactions in interstate commerce, and any law of the State of Michigan construed as [fol. 10] purporting to require the keeping of its books, accounts, papers or records in compliance with orders or directions of the Michigan Public Service Commission would, if applied to the business of plaintiff, unlawfully regulate and burden interstate commerce contrary to Article I, Section 8(3) of the Constitution of the United States.

(d) Plaintiff is not now, and has at no time been, a public utility subject to the jurisdiction of the defendant Commission, and any statute of the State of Michigan construed as purporting to subject plaintiff to such jurisdiction unlawfully burdens interstate commerce in violation of Article I, Section 8(3) of the Constitution of the United States.

15. Plaintiff is adversely affected by said order and the findings of the Commission in the opinion upon which the order is predicated, and each of the separate paragraphs thereof, and said opinion is contrary to law and said order is unlawful for the following reasons:

(a) Plaintiff is engaged wholly in interstate commerce in the State of Michigan and not otherwise; and Section 6, Act 3, Public Acts of 1939 (22.13 (6), M.S.A., 1945 Supplement), under which said proceedings was instituted, does not purport to authorize any action by the Michigan Public Service Commission of any matters relating to plaintiff or its business, and said defendant Commission had no jurisdiction to institute or entertain such proceedings, or to entertain or make any order therein with reference to its business. If so construed, said statute or [fol. 11] any other Michigan statute upon which the defendant may reply, unlawfully regulates and bur-

dens interstate commerce, contrary to Article I, Section 8(3) of the Constitution of the United States.

(b) Plaintiff is not a public utility within the meaning of any Michigan statute applicable thereto, and neither it nor its business is subject to the jurisdiction of the defendant, the Michigan Public Service Commission, and said defendant has no right, power or authority to make or enforce orders with reference to plaintiff or the conduct of its business.

(c) The said purported order of the defendant is unlawful because the said defendant was without jurisdiction of the subject matter, and said order unlawfully regulates and burdens interstate commerce in violation of Article I, Section 8 (3) of the Constitution of the United States, and is, therefore void.

(d) The defendant, the Michigan Public Service Commission, has no right, power or authority to prevent plaintiff in any manner or to any extent from contracting to sell and deliver, and selling and delivering, natural gas direct to industrial consumers in interstate commerce, and has no right, power or authority to require plaintiff to obtain or to attempt to obtain a certificate of public convenience and necessity therefor under the provisions of any Michigan statute. The purported order of the Commission requiring the plaintiff to first obtain a certificate of public convenience and necessity from the defendant to perform such service is unlawful and constitutes a threat to interfere and burden plaintiff's sale and [fol. 12] delivery of gas in interstate commerce to Ford Motor Company. There is no statute of the State of Michigan authorizing any action to be taken by the defendant interfering with said sale or the lawful right of plaintiff to make the sale, and any statute of Michigan construed to purport to authorize such order with reference to plaintiff or its business or any action thereunder attempting to interfere with and prevent such sale and delivery is as so construed and applied to plaintiff and its business an unlawful attempt to regulate and burden interstate commerce in violation of Article I, Section 8 (3) of the Constitution of the United States, and is void as applied to plaintiff.

Wherefore, the plaintiff respectfully prays that it be granted the following relief:

(a) That the said defendant may without oath, all answer upon oath being hereby expressly waived, make full, true, direct and perfect answers to all and singular the matters herein stated and charged.

(b) That the defendant be required to transmit to this Court the complete record of all proceedings upon which its opinion and order was based.

(c) That the said order of the Michigan Public Service Commission be set aside, reversed and held for naught, and the said Michigan Public Service Commission be restrained from interfering with the sale of natural gas by the plaintiff to the Ford Motor Company or any other industrial consumers in the State of Michigan.

(d) That the said Michigan Public Service Commission may be restrained during the pendency of this litigation from interfering with the aforesaid sale and delivery of gas to Ford Motor Company.

[fol. 13] (e) That the said Michigan Public Service Commission be permanently restrained and enjoined from interfering with the direct sale and delivery of natural gas by the plaintiff to Ford Motor Company or any other industrial consumer.

(f) That the plaintiff may have such other and further relief as shall be agreeable to equity and good conscience.

Panhandle Eastern Pipe Line Company, By Clayton F. Jennings, One of its Attorneys.

Shields, Ballard, Jennings & Taber, Attorneys for Plaintiff, 1400 Olds Tower, Lansing 8, Michigan.

Duly sworn to by Clayton F. Jennings. Jurat omitted in printing.

[fol. 14] Subscribed and sworn to before me this 15th day of March, A. D. 1946.

(S.) Esther L. Oppenlander, Notary Public, Ingham County, Michigan. My commission expires January 3, 1949.



## EXHIBIT A

Attached to Plaintiff's Bill of Complaint  
Industrial Gas Contract

This Agreement, made and entered into this 20th day of August, 1945 by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller," and Ford Motor Company, Dearborn, Michigan, a corporation of the State of , hereinafter referred to as "Buyer":

Seller owns and operates a natural gas transmission system, used in the transmission and sale of natural gas, and has available certain quantities of natural gas which Seller desires to transport, sell and deliver to Buyer.

Buyer desires to purchase from Seller certain quantities of such natural gas for use as industrial fuel in Buyer's plant located in Dearborn, Michigan.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

[fol. 15] 1. Seller agrees to transport, sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas in volumes substantially as follows:

(a) Monday through Friday, both inclusive, excepting holidays—25,000 M.C.F. (plus or minus 10%) per day.

(b) Saturday, Sunday, and Holidays—not more than 15,000 M.C.F. per day.

(c) Upon six months' prior written notice to Seller, Buyer shall have the right at any time during the term hereof to purchase an additional volume of gas up to but not exceeding 25,000 M.C.F. per day, subject to the terms and conditions hereof, for the term commencing on or before May 1, 1946, and up to and including November 30, 1948, and from year to year thereafter unless terminated by either party on ninety (90) days' prior written notice to the other, and at the price of

First	1,000 M.C.F. Per Day—3.2 cents per Therm
Next	1,000 M.C.F. Per Day—3.0 cents per Therm
Next	3,000 M.C.F. Per Day—2.7 cents per Therm
Next	5,000 M.C.F. Per Day—2.6 cents per Therm
Next	8,000 M.C.F. Per Day—2.2 cents per Therm
All Over	18,000 M.C.F. Per Day—2.1 cents per Therm

2. Seller shall render bills on or before the 10th day of each calendar month for all gas delivered hereunder during the preceding month.

3. Buyer agrees to pay Seller on or before the 20th day of each calendar month for all gas delivered hereunder during the preceding month.

4. Seller will add to and include in bills rendered to Buyer hereunder the amount of any tax, with respect to the sale [fol. 16] or delivery of gas hereunder, which Seller is now or hereafter required by law to collect from Buyer and pay to any governmental agency.

If, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, sales or excise tax, with respect to the natural gas sold and delivered hereunder, in excess of such tax as is now levied and imposed and which Seller is not required by law to collect from Buyer, the amount of such increased tax shall be added to the price to be paid by Buyer to Seller hereunder; provided, however, that in the event the amount of such additional tax, in the judgment of Buyer, shall operate to make the price of gas prohibitive to Buyer, then Buyer shall have the right and privilege of cancelling and terminating this contract, and thereupon all obligations and liabilities of the parties hereunder shall cease, unless Seller shall notify Buyer in writing of its election to assume and pay such additional tax; provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

5. In the event Buyer shall fail to pay any bill, for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may at its option, cancel and terminate this contract, provided that, such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

6. Seller agrees that the gas delivered hereunder shall be merchantable, and that the average total heating value of the gas, delivered in any one day, shall not be less than nine hundred fifty (950) nor more than one thousand fifty (1,050) British thermal units per cubic foot.

[fol. 17] 7. The unit of the gas delivered hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

8. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

9. The measurement of volume and the determination of volume and the determination of total heating value of gas delivered hereunder shall be made in the following manner:

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, shall be one (1) cubic foot of gas, saturated with water vapor, at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit. Provided, however, Seller may, at its option, install a recording thermometer to record the temperature of the gas flowing through the meters, and where such installation is provided, the arithmetic [fol. 18] average of the temperature recorded shall be used in computing measurements.

(d) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of the delivery of gas and thereafter monthly or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's Law, at the pressures under which said natural gas is delivered hereunder, shall be determined at intervals of three (3) months or at such other intervals as is found expedient in practice.

(f) The total heating value of the gas delivered here-



under shall be determined by a recording calorimeter located at Seller's Glenarm Compressor Station or at such other place as may be agreed upon.

10. The point of delivery of gas delivered hereunder shall be on the outlet side of Seller's measuring station at the point of connection between the facilities of Seller with those of Buyer.

11. Seller agrees to install, maintain and operate at its own expense, at or near the point of delivery, a meter or meters and other necessary measuring equipment to measure the gas delivered hereunder.

12. Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon the request of Buyer, Seller will submit such records and charts, [fol. 19] together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

13. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

14. If, upon test, any measuring equipment (including recording calorimeter) is found to be not more than two (2) per cent fast or slow, previous recordings of such equipment shall be considered correct in computing the gas delivered hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of thirty (30) days.

15. Seller shall be in control and possession of the gas

delivered hereunder and responsible for any damage or injury caused thereby, until the same shall have been delivered to Buyer at the point of delivery, after which, Buyer shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

[fol. 20] 16. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the point of delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

17. The natural gas to be sold hereunder, will be delivered by Seller to Buyer at main or lateral line pressures, without any reduction except such as Seller deems necessary to facilitate measurement and delivery.

18. The title to all meters, appliances, equipment, etc., placed on Buyer's premises and not sold to Buyer shall remain in Seller, with the right of removal at any time; and no charge shall be made by Buyer for use of premises occupied by same.

19. The obligation of Seller to sell and deliver gas hereunder shall be subject to Seller's right to curtail or interrupt deliveries of gas to Buyer, when, in Seller's judgment, such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly, from the pipe line system of Seller, under classifications contemplating an uninterrupted supply of gas.

20. Neither party shall be liable to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery [fol. 21] or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

21. Buyer agrees to keep a sufficient quantity of other

fuel in stock, at all times, so that no material injury or damage will result to Buyer in case of any curtailment or interruption of gas deliveries hereunder.

22. All gas sold and delivered hereunder is intended solely for use as industrial fuel in Buyer's plant and shall not be diverted or sold by Buyer.

23. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

24. This contract supersedes and cancels all previous contracts and agreements, between the parties hereto, with respect to the subject matter hereof.

25. This contract shall not be considered as renewed or extended beyond the term hereof, except by express agreement of the parties hereto in writing.

26. Any notice, statement or bill provided for in this contract, or any notice which either party may desire to give to the other, shall be in writing and shall be duly delivered when mailed by either registered or ordinary mail, to the post office address of either of the parties [fol. 22] hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company,  
Kansas City, Missouri.

Buyer: Ford Motor Company, Dearborn, Michigan.

27. Seller's measuring equipment shall be located on its present pipe line at a point to be mutually agreed upon.

28. Seller recognizes that Buyer must convert his equipment and educate his personnel in the use of natural gas. Seller further recognizes that Buyer cannot utilize the total volume of natural gas Buyer agrees to take hereunder until this conversion is completed.

Buyer does agree, however, to take a minimum of 1,000 M.C.F. gas per day within 30 days after natural gas is made available, and further agrees to increase his daily take as rapidly as practicable thereafter up to the total volume mentioned in Paragraph 1 hereof. In no event, however, shall the period of conversion and education of Buyer's personnel referred to hereunder extend over a period of more than fifteen (15) months from the commencement of natural gas service hereunder.

29. Seller agrees that during the conversion period men-



tioned in Paragraph 28 hereof, Buyer shall be billed and shall only be obliged to pay for all the gas delivered to Buyer hereunder and at a rate of 2.30 cents per therm.

At the end of the conversion period, which in no event shall extend over a period of more than fifteen (15) months from the commencement of service, the rate of 2.30 cents per therm shall cease to exist and in its stead the price [fol. 23] quoted under Paragraph 1 hereof shall be in full force and effect.

30. During periods when natural gas deliveries are curtailed by Seller and Buyer's requirements are in excess of actual deliveries made by Seller to Buyer, it is agreed that the average price per therm to be paid by Buyer for gas delivered hereunder shall be computed as though, in fact, the Buyer had received a daily volume of natural gas equal to the average of Buyer's daily take for the five (5) working days next preceding the date of first curtailment.

The average price per therm so determined shall only be used in computing the cost of natural gas actually delivered during such period of curtailment.

31. At the request of Seller, Buyer agrees to use its gas holder so far as practicable for the purpose of leveling off or reducing its hourly take of natural gas from Seller.

32. The pressure of gas at the point of delivery mentioned in Paragraph 10 hereof shall be not less than 60 pounds per square inch gauge.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Secretaries thereunto duly authorized, and their respective corporate seals to be hereto affixed.

Panhandle Eastern Pipe Line Company, by W. G. Maguire, Chairman of Board.

Executed 10-20-'45.

Attest:

\_\_\_\_\_, Secretary.

Ford Motor Company, by (signed) H. L. Moekle,  
Secretary.

[fol. 24] Executed September 28, 1945.

(initialed) H.H.O., A.E.J., W.W.D., D.L.N., W.L.B.,  
J.M.C.

Attest:

(signed) H. H. Ormond. 9-28-'45.

[fol. 25]

## EXHIBIT B

Attached to Plaintiff's Bill of Complaint

Michigan Public Service Commission  
Lansing 13, Michigan

November 6, 1945.

Harry F. Kelly, Governor.

William J. McBrearty, Chairman, Richard H. Barkell, Commissioner, Schuyler L. Marshall, Commissioner, John H. Schouten, Commissioner, Gilbert T. Shilson, Commissioner, Sophus A. Lund, Secretary.

Panhandle Eastern Pipe Line Company, 135 South LaSalle Street, Chicago 3, Illinois.

GENTLEMEN:

Re: Sale of Natural Gas by Panhandle Eastern Pipe Line Company to the Ford Motor Company

This Commission has been informed that your company has requested contractors to submit bids for the construction of a pipe line to connect your transmission line with the Ford plant at Dearborn.

The Commission has been told that you have a contract with the Ford Motor Company to supply that company with 25,000,000 cubic feet of firm gas per day and an additional 25,000,000 cubic feet of interruptible gas—that you are offering this gas to the Ford Motor Company at [fol. 26] 24 cents per MCF; and that you propose to build a connecting 18 inch line to enable you to make delivery of the gas. The bids requested from the contractors are for the construction of this line.

This Commission is vested with the power and authority to regulate gas and pipe line companies. By Act 69 of the Public Acts of 1929 (Sec. 22.141, Mich. Stat. Ann.) it is provided that when a territory is already being served by a utility or agency, any other utility designed to render any service of a similar kind within the territory or desiring to construct any plant or facilities to be used in rendering such a service must first obtain a certificate of Public Convenience and Necessity from this Commission.

By Act 9 of the Public Acts of 1929 (Sec. 22.131, Mich. Stat. Ann.) it is provided that any person desiring to construct transmission mains for the transportation or conveying of natural gas shall submit to this Commission a map or plat of the proposed line which it is desired to construct, and obtain a certificate of Public Convenience and Necessity for the construction of such pipe line.

According to the information presented to this Commission your company considers the line which it proposes to construct to be a distribution line and not to be an extension of its transmission line. As above stated, this Commission is of the opinion that it has full power and authority to regulate and control the distribution and sale of gas to local consumers within the State of Michigan, and more particularly when the service rendered or to be rendered is similar to that of a local plant furnishing service to local consumers.

[fol. 27] The purpose of this letter is to advise you that whenever your company undertakes to render any service which is local in its nature and pertains to the furnishing of natural gas to local consumers, it will be necessary for you first to comply with the Michigan statutes pertaining to the distribution of natural gas, and you are further advised that this Commission considers its duties to include the enforcement of such statutes.

Yours very truly, W. J. McBrearty, Chairman.

WJMcB-JWW:cg.

[fol. 28]

EXHIBIT C

Attached to Bill of Complaint

State of Michigan

Before the Michigan Public Service Commission

D-3335

Panhandle Eastern Pipe Line Company: In the matter of the complaint of the Michigan Consolidated Gas Company concerning the direct sales of natural gas by Panhandle Eastern to the Ford Motor Company.

Special Appearance for the Purpose of a Motion to Dismiss

Now comes Panhandle Eastern Pipe Line Company, by its attorneys, Shields, Ballard, Jennings & Taber, and



John S. L. Yost, and appears specially for the purpose of a motion to dismiss the pending proceedings, and for no other purposes whatsoever.

Shields, Ballard, Jennings & Taber, by Clayton F. Jennings, 1400 Olds Tower, Lansing Michigan;  
John S. L. Yost, 135 S. LaSalle Street, Chicago, Ill., Attorneys for Panhandle Eastern Pipe Line Company.

Dated: January 16, 1946.

[fol. 29]

EXHIBIT D

Attached to Plaintiff's Bill of Complaint

State of Michigan

Before the Michigan Public Service Commission

D-3335

Panhandle Eastern Pipe Line Company: In the matter of the complaint of the Michigan Consolidated Gas Company concerning the direct sales of natural gas by Panhandle Eastern to the Ford Motor Company.

Motion to Dismiss

Now comes Panhandle Eastern Pipe Line Company, by and through its attorneys, Shields, Ballard, Jennings & Taber and John S. L. Yost, it having heretofore appeared specially in these proceedings for the purpose of making this motion, and moves the Commission to enter its order dismissing these proceedings upon the following grounds and for the following reasons:

1. That the Michigan Public Service Commission has no jurisdiction over the subject matter of the sale of natural gas, a commodity in interstate commerce, by Panhandle Eastern Pipe Line Company to Ford Motor Company.

2. That the sale of natural gas by Panhandle Eastern Pipe Line Company to Ford Motor Company is not a local business, but is an incident to its business of transporting natural gas in interstate commerce from the States of [fol. 30] Texas and Kansas into the State of Michigan by pipe lines owned and operated by it and the selling of

natural gas for ultimate distribution to the public to the Michigan Consolidated Gas Company and others.

3. That the Michigan Public Service Commission is without jurisdiction in regard to rates charged for gas sold and delivered as a commodity in interstate commerce.

4. Under the Commerce Clause of the Federal Constitution a state has no right of regulation of a sale and delivery of natural gas as a commodity in interstate commerce.

5. That the natural gas to be delivered to Ford Motor Company under its contract with Panhandle Eastern Pipe Line Company is wholly a commodity in interstate commerce.

6. That the Michigan Public Service Commission has no power to prevent the Panhandle Eastern Pipe Line Company from selling and the Ford Motor Company from buying natural gas transported by the Panhandle Eastern Pipe Line Company in its pipe lines from another state into the State of Michigan.

7. There is no claim by the Michigan Public Service Commission that these proceedings are founded upon the inherent police powers of the State.

8. Panhandle Eastern Pipe Line Company has the right to sell and deliver gas to industrial consumers without regulation by the Michigan Public Service Commission of such interstate commerce.

9. That any regulation of sale and delivery of natural gas in interstate commerce is for Congress; that insofar [fol. 31] as the Federal Natural Gas Act is applicable to the contract in question, the matter is now pending before the Federal Power Commission, and the Michigan Public Service Commission should not presume to act upon any matter over which the Federal Power Commission may have jurisdiction.

This motion is based upon the files and records related to these proceedings which are in the possession of the Michigan Public Service Commission.

Shields, Ballard, Jennings & Taber, by Clayton F. Jennings; 1400 Olds Tower, Lansing, Michigan;  
John S. L. Yost, 135, S. LaSalle Street, Chicago,  
Illinois, Attorneys for Panhandle Eastern Pipe  
Line Company.

**EXHIBIT E****Attached to Plaintiff's Bill of Complaint****Opinion of Michigan Public Service Commission and Order  
to Cease and Desist****(Issued February 19, 1946)**

On December 18, 1945, the Michigan Consolidated Gas Company complained to this Commission concerning the Panhandle Eastern Pipe Line Company.

The Panhandle Eastern Pipe Line Company is a corporation organized and existing under the laws of the State of Delaware. It was domesticated in the State of Michigan [fol. 32] on July 21, 1942, and is at this time a foreign corporation admitted to do business within the State of Michigan. The company may hereinafter be referred to simply as "Panhandle."

Panhandle owns and operates an integrated natural gas pipe line system situated in the states of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. It is a "natural gas company," as defined in the Natural Gas Act (15 U. S. C., Sec. 717 et seq.). It purchases and produces natural gas in the States of Texas and Kansas and it purchases natural gas in the State of Oklahoma. It is engaged in the transportation of natural gas through its transmission lines for sale (a) to local distributing companies for resale for ultimate public consumption for domestic, commercial, industrial, and other uses, and (b) directly to industries and to others for their own use.

Panhandle's main transmission line extends approximately 1,160 miles from the Amarillo Gas Field in the Texas Panhandle and the Hugoton Gas Field in southwestern Kansas. From the main transmission line, lateral or branch lines extend to interconnections with gas lines of various distributing companies and to industrial plants.

The Michigan Consolidated Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan. For convenience it may be hereinafter referred to as the "Gas Company."

The Gas Company is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic, commercial and industrial use within the State of Michigan. One of the territories served by it contains the cities of Detroit, Hamtramck, Highland



[fol. 33] Park, Dearborn, River Rouge, Grosse Pointe, Melvindale, Wyandotte and Lincoln Park, and 22 contiguous or adjacent villages and townships in Wayne County. This territory is commonly known as and may hereinafter be referred to as the "Detroit District."

The regulations and schedules of rates of the Gas Company are on file with this Commission and the Company has obtained all requisite authority and approval under the laws of the State of Michigan to carry on its business within the state and particularly within the Detroit District. The Gas Company obtains its entire supply of natural gas which it distributes within the Detroit District from Panhandle, taking delivery thereof at the terminus of Panhandle's natural gas transmission line in Melvindale, Michigan.

The Ford Motor Company purchases gas from the Michigan Consolidated for use in its River Rouge plant and elsewhere within the Detroit District. The furnishing of gas to the Ford Motor Company contributes materially to the income of the Michigan Consolidated. The gas received by the Ford Motor Company is used by it in its manufacturing business and of such gas it is the ultimate consumer.

The gist of the Gas Company's complaint against Panhandle is that Panhandle has entered into negotiations with the Ford Motor Company with the view to supplying directly a large amount of natural gas to that company for use and consumption at its River Rouge plant; and, that the proposed sale of gas to the Ford Motor Company is part of a definite plan and purpose by Panhandle to make sales of gas directly to industrial consumers in all territory within the State of Michigan which it is practical to reach by extension of its transmission lines, regardless [fol. 34] of whether such customers are now served by, or within the territory being served by, the Michigan Consolidated or any other utilities distributing gas to local ultimate consumers.

This Commission is an administrative agency of the State of Michigan. It exists by virtue of the provisions of Act 3 of the Public Acts of 1939 and it is possessed of such powers as have been conferred upon it by statute.

The questions here to be determined are:

1. Does this Commission have jurisdiction over the subject matter of the complaint; and,

2. If it be determined that jurisdiction has been vested in the Commission, what conditions and requirements if any, shall be put upon Panhandle, in the event that the grounds of the complaint are established?

On the 21st day of December, 1945, this Commission issued its order to show cause, directed to Panhandle, ordering it to show cause, if any there be, why this Commission should not enter an order against it to cease and desist from making direct sales of natural gas to the ultimate consumer within the State of Michigan, and more especially within the territory being presently served by a public utility distributing natural gas to the ultimate consumer, until such time as it shall have first obtained from this Commission a certificate of public convenience and necessity and shall have otherwise complied with the applicable statutes of the State of Michigan and with the relevant rules and regulations of this Commission concerning the distributing of natural gas to ultimate consumers. [fol. 35] The adjourned date under the order to show cause was the 17th day of January, 1946. At the time and place of the adjourned hearing Panhandle appeared specially and moved to dismiss the proceedings upon the grounds that the Commission lacked jurisdiction. A ruling upon the motion was deferred until such time as the Commission shall have heard the testimony of the parties, saving to Panhandle every benefit of its special appearance should it elect to participate further and offer testimony.

Having been assured upon the record by counsel for the Commission that all the rights and benefits of its special appearance were preserved and would in nowise be waived, Panhandle entered into a stipulation with the Gas Company as to certain facts and certain evidence, and both parties presented witnesses at the hearing, accordingly, a full hearing has been had upon the merits, and this Commission is now in position fully to dispose of the controversy.

By section 4 of Act 3 of the Public Acts of 1939 (22.13 (4), Mich. Stat. Ann., 1945 Supp.) all the rights, powers and duties vested by law in the Michigan public utilities commission and in the Michigan railroad commission were transferred to and vested in this Commission.

By Section 6 of Act 3 of the Public Acts of 1939 (22.13 (6), Mich. Stat. Ann., 1945 Supp.) it is provided:

"The Michigan public service commission is hereby vested with complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law. It is hereby vested with power and jurisdiction to regulate all rates, fares, fees, charges, services, [fol. 36] rules, conditions of service and all other matters pertaining to the formation, operation, or direction of such public utilities. It is further granted the power and jurisdiction to hear and pass upon all matters pertaining to or necessary or incident to such regulation of all public utilities, including \* \* \* oil, gas, and pipe-line companies \* \* \*."

By Section 4 of Act 3 of the Public Acts of 1939, it is also provided that:

"Any order or decree of the Michigan Public Service Commission shall be subject to review in the manner now provided by law for reviewing orders and decrees of the Michigan railroad commission or the Michigan public utilities commission."

By Section 26 of Act 300 of the Public Acts of 1909 (22.45 Mich. Stat. Ann.; C. L.'s '29, 11042) a plenary suit in the Circuit Court, In Chancery, for the County of Ingham is provided to review orders of the Michigan railroad commission; and under section 9 of Act 419 of the Public Acts of 1919 (22.9, Mich. Stat. Ann.; C.L.'s '29, 11014), the same review was provided for orders of the Michigan public utilities commission.

In its interpretation of the scope of the powers conferred by section 6 of Act 3 of the Public Acts of 1939, *supra*, this Commission has always considered the limits within which it may exercise its discretion to be fixed by the boundary of judicial reasonableness as determined by the court under the statutory provisions for review. In brief, this Commission has always considered section 6 as a part of an entire act and not as an isolated section.

[fol. 37] By Section 2 of Act 69 of the Public Acts of 1929 (22.142, Mich. Stat. Ann.; C. L.'s '29, 11088) it is provided:

"No public utility shall hereafter begin the construction or operation of any public utility plant or system



thereof nor shall it render any service for the purpose of transacting or carrying on a local business either directly, or indirectly by serving any other utility or agency so engaged in such local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service, where such municipality is receiving service of the same sort, until such public utility shall first obtain from the Commission a certificate that public convenience and necessity requires or will require such construction, operation, service, or extension."

By Section 1 of that act the terms used are defined: The term municipal is defined to mean a city, village or township. The term public utility is defined to mean "persons and corporations, other than municipal corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for producing, generating, transmitting, delivering or furnishing gas or electricity for the production of light, heat or power to or for the public for compensation." The term commission is defined to mean the Michigan public utilities commission.

We believe that the State of Michigan, under the commerce clause of the federal constitution, is deprived of the power to impose as a condition upon the right to act in interstate commerce the requirement of obtaining a certificate of public convenience and necessity. We believe, therefore, [fol. 38] that the provisions of Act 69 of 1929 can only apply to intrastate commerce.

To invoke the prohibition found in Act 69 of the Public Acts of 1929, *supra*, it is necessary to find that Panhandle is engaging, or proposes to engage in, a local business and that it is a public utility.

This statement appears in the opinion of the Supreme Court of the United States in *Missouri ex rel. Barrett v. Kansas Natural Gas Company*, 265 U. S., 298:

" . . . The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another state, and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing com-

panies. In such connection the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

Again in *East Ohio Gas Company v. Tax Commission*, 283 U. S., 465, the United States Supreme Court said:

" . . . The treatment and division of the large compressed volume of gas is like the breaking of a large package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail. (cases cited) It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitably for the service for which it is intended is not interstate commerce but a business of purely local concern exclusively within the jurisdiction of the State."

[fol. 39] In the case of *Southern Natural Gas Corporation v. Alabama*, 301 U. S., 148, the gas company had four customers in Alabama. Three were intrastate utilities. The fourth was the Tennessee Coal, Iron & Railroad Company, a subsidiary of the U. S. Steel Corporation, which purchased gas for itself and affiliated companies operating steel and industrial plants in the Birmingham district and which were not public utilities but consumers. The question at issue was whether or not service to the fourth customer was service in intrastate commerce.

Mr. Chief Justice Hughes, writing for the court, said:

" . . . We had occasion in *East Ohio Gas Company v. Tax Commission*, 283 U. S., 465, 470, 75 L. ed. 1171, 1174, 51 S. Ct. 499, to consider the distinction between the transportation of gas into a state and the furnishing of the gas so-transported to consumers within the state. . . .

" . . . We perceive no essential distinction in law between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the *East Ohio Gas Co.* case to constitute an intrastate business."

In the case of *Illinois Natural Gas Co. v. Central Illinois Public Service Commission*, 375 Ill., 634, 32 N. E. (2d) 157,

the Illinois Supreme Court relied upon the mechanical tests as to whether or not there had been a reduction in pressure of the gas within the State of Illinois during transportation as being determinative of the question of the nature of the commerce. The appellant, an Illinois corporation, was a wholly owned subsidiary of the Panhandle Eastern Pipe [fol. 40] Line Company. The appellant owned a pipe line system wholly in Illinois whose transmission pipe lines connected at various points in Illinois with the main line of Panhandle Eastern. Appellant, by long term contract, purchased its supply of gas from Panhandle Eastern and transported it through its own lines to local gas distributing utilities in Illinois to which it sold the gas for distribution to consumers in Illinois cities and towns. It also sold and delivered gas to several industrial consumers in the state. The gas moved continuously under pressure applied by Panhandle, from the gas fields until it entered appellant's transmission lines, where appellant reduced the pressure according to the needs of its services.

The Illinois Supreme Court held, that although the sale of the gas and its movement into the state was interstate commerce, that commerce came to an end when appellant reduced the gas pressure before its delivery into the service pipes of the distributors, accordingly, it held that the sale of the gas to the distributors was intrastate commerce.

On review this decision was reversed by the United States Supreme Court, 314 U. S. 498.

Such a result demonstrates that the answer to such a problem as confronts this Commission may not be discovered through the use of fiction and the reliance upon mechanical tests. We believe that the nature of the transaction, as intrastate commerce or otherwise, is not dependent upon the employment of fictions and mechanical tests, but is determined by the essential character of the commerce.

[fol. 41] In this connection, see the case of Atlantic Coast Line R. Co. v. Standard Oil Co., 275 U. S. 257, where the United States Supreme Court held that the fact that the discharge of oil from ships into storage tanks in interstate transportation occurred at the same time that the oil was being drawn from the tanks into cars for distribution did



not prevent the distribution from being intra- instead of inter-state, the court saying:

"The question whether commerce is interstate or intrastate must be determined by the essential character of the commerce, and not by mere billing or forms of contract, although that may be one of a group of circumstances tending to show such character. The re-shipment of an interstate or foreign shipment does not necessarily establish a continuity of movement or prevent the shipment to a point within the same state from having independent or intrastate character, even though it be in the same cars. . . ."

In our opinion the essential fact here is that the Panhandle Eastern is undertaking direct service to ultimate consumers within the State of Michigan.

We hold that the rendering of service to the ultimate consumers by a natural gas company constitutes doing a local business and is intrastate in character. We also hold that the term "ultimate consumer" includes within its scope the industrial users of gas as well as the commercial and residential users.

Should we be in error as to the present state of the law and should it still be necessary to proceed upon the basis of fiction, the facts in this case permit of the use of mechanical tests. Pandhandle's main transmission line in this state is a 22 inch line. Deliveries to industries within the State [fol. 42] of Michigan, and in particular deliveries to the Ford Motor Company will not be made directly with this line. To make such deliveries it will be necessary that the main transmission line be tapped and that metering facilities be employed. This situation is illustrated by the arrangements which are being made to render the direct service to the Ford Motor Company. Panhandle proposes to tap its 22 inch line with an extension line approximately 18 feet long. At that point they will install a 10 inch valve. The valve will be swedged to 12 and 3/4 size, and the proposed pipe is 12 and 3/4 inches O. D.

Panhandle proposes to erect a meter and regulator station and this is required for the purpose of regulating and measuring the volumes of gas sold to the Ford Motor Company.

The type of station to be erected is known as an "orifice meter measuring station" and will consist of three 10 inch

runs with the necessary valves, fittings, orifice flanges, and recording instruments. There will be three regulators, one installed in each run. All of this will be housed in a suitable building and all will be located, according to present plans, in close proximity to the main transmission line. It will be connected with the main transmission line through a tap to be made in that line. At the outlet of the metering station there will be a connection to the proposed line which is to be built by the Ford Motor Company.

The meter measuring and regulator station is to be used for controlling the pressure and determining the quantities of gas that will be delivered at that point to the Ford Motor Company. All of the gas that is proposed to be delivered to the Ford Motor Company will go through the tap and into the meter station. On the inlet side of the [fol. 43] station there may be 600 pounds working pressure; on the outlet side of the station the pressure will not be more than 100 pounds.

Under the arrangement if the Ford Motor Company so desired, gas could be taken away from the metering station at three different pressures and three different lines.

We believe that the erection and use of the facilities and connections above described satisfies any mechanical test as to reduction in pressure and the breaking of bulk, and that the direct delivery by Panhandle Eastern to the Ford Motor Company of natural gas to be consumed by that company is not interstate commerce.

At this time we do not hold that it is necessary to obtain from us a certificate of public convenience and necessity for the erection of such facilities, and we reserve decision of this question until such time as an application is made to us for a certificate.

From its text it is clear that Act 69 of the Public Acts of 1929 applies only to public utilities. Is the Panhandle Eastern a public utility within the State of Michigan? We are of the opinion that when the Panhandle Eastern Pipe Line Company undertakes the service of natural gas to ultimate consumers within the State of Michigan it is acting as a public utility within the meaning of that term as used in the act; and we so find.

In a broad sense the term "public utility" includes any business enterprise in which the public has such an interest as will sustain public regulation. Within such a meaning an insurance company is a public utility (German Alliance

Insurance Company v. Lewis, 233 U. S. 389); so is a dis-[fol. 44] tributor of milk (Nebbia v. New York, 291 U. S. 502). In the more customary sense the term refers to a business enterprise where there has been a holding out of service to the public and property has been devoted to a public use.

Panhandle contends that it has not devoted its property to a public use and points to the fact that all services rendered by it are contractual. The employment of a contract is not controlling of the question. Every customer of any utility is a contractual customer; because before service will be commenced the utility requires that a contract be signed. This is true of electrical companies, telephone companies, common carriers and all others engaged in the utility field. In the case of Breuer v. Public utilities commission, 118 Ohio St. 95, 160 N. E. 623, the court pointed out that the fact that a contract is executed in each particular case by the transportation of merchandise, so long as the service is available to any responsible party requesting it does not prevent the enterprise from being a public utility and subject to regulation as such. The court said:

"Breuer admitted that he would execute a contract with anyone who had merchandise to be transported, and that it was only a question of the patron agreeing to his terms, and the patron being a responsible person. Obviously it was necessary that the person be a responsible person, because he did not collect in advance; neither did he collect upon delivery of the merchandise. \* \* \* The decisive feature of the case is, as admitted by him, that he would enter into a contract with any responsible person for a single transaction to the limit of the capacity of his equipment. This comes [fol. 45] clearly within the definition laid down by all the authorities, many of which are cited in Hissen v. Guran, 112 Ohio St. 59, 146 N. E. 808. The Commission having found that he was a common carrier, and therefore subject to regulation, its order must be affirmed."

In the case of Michigan public utilities commission v. Kroll, 245 Mich. 297, the Michigan Supreme Court had a similar problem before it. This is a carrier case and the carrier insisted that he was a contract carrier because he



required contracts of his customers before rendering service. The Michigan Court said:

"\* \* \* To all intents and purposes there has been no change in the nature of the business done by him after the last permit was refused, except that he sought to protect himself from a violation of the law by securing the contracts entered into from his regular patrons and performing other services which might be called 'errands' for customers. The law will not permit such an evasion of the intent and purpose of the statute. \* \* \*"

The declared policy of the Panhandle is to take over and serve directly such industrial customers as it may obtain. Such policy has been declared by the Panhandle on numerous occasions. Under the stipulation of facts entered into by the parties to these proceedings, the following testimony of Oscar Morton is presented. Mr. Morton is the rate engineer of Panhandle and he was testifying at a hearing before the Federal Power Commission held on February 26, 1945. The testimony is as follows:

"Q. And I suppose that if the industrial market increases, if others than DuPont show an interest in [fol. 46] obtaining gas, you would also want to serve that directly, any other industrials?

A. Yes.

Q. That is, you wouldn't want to, for instance, share the industrial market with the local distributing companies?

A. Of course, you say 'if you.' You mean the company policy?

Q. Yes.

A. It is our policy to secure as much of the load as direct as possible.

Q. Would you say that that policy related to the overall Panhandle system? That is, it is their policy to obtain any place on or adjacent to their system as much direct industrial gas as they can?

A. Yes, sir, that is the avowed policy of the company".

Within its organization the Panhandle Eastern Pipe Line Company has a department known as the "New Business Department." It is the function of this department to ob-

tain new direct industrial business for the Panhandle Eastern. There has been stationed at Detroit, in the State of Michigan, for several years an employee of the Panhandle whose work is directed by the head of the New Business Department. This gentleman's name is Ballard, and he has, in performance of his duty, been active in the solicitation of new, direct industrial business.

We are of the opinion that the fact that at the present time Panhandle has only two industrial customers within the State of Michigan, namely, the Michigan Seamless Tube Company, at South Lyons, Michigan, and the Albion Malleable Iron Company, at Albion, Michigan, is not controlling on the question as to the breadth of the company's activity [fol. 47] ties. If a particular service rendered is offered to all those members of the public who can use that particular service, the public is in fact served, and the business is affected with the public interest, although the actual number of persons so served is limited. Furthermore, from the very nature of things the beginning of any public utilities operations is limited to a few original customers. Panhandle Eastern, under its policy, plans to add customers so soon as they are available.

The business of transporting and delivering natural gas is a business affected with the public interest; otherwise it would not be lawfully subject to regulation by the federal government. The public nature of the business is not changed because of the fact that territorially it is confined within the limits of a single state.

We are of the opinion that it is unlawful for the Panhandle to make direct service of natural gas to industrial consumers in the State of Michigan within municipalities already being served by a public utility until it shall have first obtained a certificate of public convenience and necessity so to do, accordingly.

It Is Ordered That the Panhandle Eastern Pipe Line Company, a Delaware corporation admitted to do business within the State of Michigan, cease and desist from making direct sales and deliveries of natural gas to industries within the State of Michigan, located within municipalities already being served by a public utility, until such time as it shall have first obtained a certificate of public convenience and necessity from this Commission to perform such services.

This order shall not apply to service to the Michigan

Seamless Tube Company, at South Lyons, Michigan, for [fol. 48] the reason that such service was approved by the order of this Commission entered on the 12th day of July, 1943; nor to service to the Albion Malleable Iron Company, for the reason that such service is being performed through the Albion Gas Light Company and under terms and conditions agreeable to that company, the Albion Gas Light Company being a public utility directly authorized to perform such service.

Panhandle's motion to dismiss is hereby denied.

Michigan Public Service Commission, W. J. McBrearty, Chairman; S. L. Marshall, Commissioner; J. H. Schouten, Commissioner; G. T. Shilson, Commissioner. (Seal.)

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IN CIRCUIT COURT OF INGHAM COUNTY

ORDER PERMITTING INTERVENTION OF MICHIGAN CONSOLIDATED GAS COMPANY—Filed March 27, 1946

Upon reading and filing the stipulation of counsel hereto attached,

It is hereby ordered that the Michigan Consolidated Gas Company, a Michigan corporation, may be and it is hereby permitted to intervene in said cause and to file an answer to the bill of complaint filed herein within fifteen (15) days from the date of this order.

Paul G. Eger, Circuit Judge.

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[fol. 49] IN CIRCUIT COURT OF INGHAM COUNTY

ANSWER OF THE DEFENDANT COMMISSION—Filed April 9, 1946

Comes now the Michigan Public Service Commission, by and through its attorneys, John R. Dethmers, Attorney General, and James W. Williams, Assistant Attorney General, and, saving and reserving unto itself full benefit of every objection and exception whatsoever, makes answer to the Bill of Complaint, saying:

1. It admits the allegations contained in paragraph 1, excepting the following allegations:

(a) That none of the books of account or operating records are, or have at any time been, kept at said



statutory office in Michigan, or at any other office of place in Michigan.

(b) That all such books of account and operating records pertaining to its business are kept and maintained at one or the other of its aforesaid principal executive offices outside the State of Michigan.

(c) That all of the operations and business of plaintiff, including its operations and business in the State of Michigan, are directed, managed and controlled from the aforesaid principal executive offices outside of the State of Michigan.

As to the excepted allegation, it has not sufficient information to form a belief, and therefore leaves plaintiff to make proof of such of them as the court may determine to be material to these proceedings.

2. It admits the allegations contained in paragraph 2, excepting the allegation that plaintiff neither produces nor [fol. 50] purchases any of such gas in the State of Michigan.

As to the excepted allegation, it avers that in the period from January to April, inclusive, of 1943, the Panhandle Eastern Pipe Line Company purchased a total of 3,713,000 cubic feet of gas produced from a well in Calhoun County, Michigan, under contract with the Continental Oil Company; and, that Panhandle Eastern Pipe Line Company has been and is now actively engaged in attempting to discover and develop natural gas in the State of Michigan. The company has drilled two non-commercial wells to date.

3. It admits the allegations contained in paragraph 3, excepting the allegation that "the defendant's only right to regulate being only insofar as the police powers reserved to the State were involved," which excepted allegation it denies.

4. It denies the allegations contained in paragraph 4. At the trial, and in support of said denial, the defendant Commission will rely upon:

(a) Statement of the powers and purposes of the Interstate Pipe Line Company (by which name plaintiff was first incorporated) contained in the Certificate of Incorporation filed in the office of the Secretary of State of the State of Delaware on the 23rd day of December, 1929, a copy of which is in the possession of the plaintiff.

(b) A Certificate of Amendment changing the name from "Interstate Pipe Line Company" to "Panhandle Eastern Pipe Line Company," which Certificate of Amendment was filed May 9, 1930 with the Secretary [fol. 51] of State of the State of Delaware, a copy of which Certificate of Amendment is in the plaintiff's possession.

(c) The following statement contained in the petition filed with this Commission to secure authority to file Articles of Association with the Michigan Corporation and Securities Commission and to be admitted to do business in this State as a foreign corporation. This petition was filed June 16, 1941. The statement is as follows:

"1. That it is a corporation existing under and by virtue of the laws of the state of Delaware and desiring to be admitted to do business in the State of Michigan under the provisions of Act No. 327 of the Public Acts of 1931 for the purpose of Producing, purchasing, transporting, and selling natural gas and constructing, operating, and maintaining pipe lines and other transmission facilities incidental to all of the foregoing and all such other powers and purposes set out in Petitioner's Certificate of Incorporation."

(d) A certain letter dated April 7, 1942, from Shields, Ballard, Jennings and Tabor to this Commission, which letter is as follows:

"Michigan Public Service Commission,  
State Office Building  
Lansing, Michigan

Attention: Secretary's Office

Gentlemen:

In June, 1941 Panhandle Eastern Pipe Line Company made application for approval by the Commission to its application to be admitted to do business [fol. 52] in the State of Michigan. At the time this application was made because it was then the thought of the Commission that it would be necessary for this corporation to be domesticated before the Commission could enter an order permitting it to construct

pipe lines in the State of Michigan. The application was made under protest, and it was later determined that domestication was not necessary.

In the future it may be that the Panhandle Eastern Pipe Line Company will wish to do business in the State of Michigan. Therefore, we withdraw our protest filed with the application for domestication, and request that the Commission proceed to the approval of the application. The statutory fee was deposited at the time the application was originally filed.

Yours truly, Shields, Ballard, Jennings & Taber, by Clayton F. Jennings."

(e) Upon the order of this Commission dated June 11, 1942, the material parts of which are as follows:

8

"That the approval of the securities of the petitioner by this Commission is sought solely for the purpose of fulfilling the statutory condition that such approval be had before the petitioner may exercise its corporate powers in this State and for the reason that petitioner does now wish to obtain permission to do business in this State; accordingly

"It is Ordered:

[fol. 53]

1

"That the Panhandle Eastern Pipe Line Company be, and it hereby, is authorized to file its Articles of Association with and to obtain permission to do business within the State of Michigan from the Corporation and Securities Commission.

2

"That the Commission retains jurisdiction in this matter and the right to issue such other and further orders herein as may hereafter be deemed just, fitting and proper."

and upon the files and records of the proceedings before this Commission, including the stipulation of the parties before the Commission and the testimony taken.

Further answering paragraph 4, the defendant Commission avers that the declared policy of the Panhandle East-



ern Pipe Line Company is to take over and serve directly such industrial customers as it may obtain, and that this policy has been declared by the Panhandle Eastern Pipe Line Company on numerous occasions; also that there has been stationed at Detroit, in this State, for several years, an employee of the Panhandle Eastern whose duties have included the solicitation of new industrial business for the Panhandle, and that such employee in performance of his duties has been active in such solicitation.

Further answering paragraph 4, it avers that the Panhandle Eastern Pipe Line Company plans and intends to add direct customers so soon as they are available.

[fol. 54] 5. It admits the allegations of paragraph 5, except the allegation that before such delivery the plaintiff reduces the pressure of such gas to such pressure as the distributing companies desire. As to the exception, the Commission does not have sufficient information to form a belief and therefore leaves plaintiff to its proof.

6. It has no knowledge sufficient to form a belief as to the allegation that the Michigan Consolidated Gas Company is supplying natural and artificial gas to the public within the State of Michigan for domestic consumption and industrial use under rate schedules filed with the Federal Power Commission, and therefore leaves plaintiff to its proof should the court determine the fact to be material to these proceedings.

Further answering paragraph 6, it avers that the Michigan Consolidated Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Michigan. That this company is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic, commercial and industrial use within the State of Michigan. That the company has been so engaged for a long period of time, to wit, for a period of 20 years and upwards. That one of the territories served by it contains the cities of Detroit, Hamtramck, Highland Park, Dearborn, River Rouge, Grosse Pointe, Melvindale, Wyandotte and Lincoln Park and 22 contiguous or adjacent villages and townships in Wayne County. That it has served such territory for a long period of time, to wit, for a period of 20 years and upwards. That such territory is commonly known and described as the "Detroit District."

[fol. 55] That the Michigan Consolidated Gas Company is successor to the rights, privileges and duties of the De-

troit City Gas Company. That the Detroit City Gas Company manufactured, sold and distributed gas in the City of Detroit and in the Detroit District for a long period of time, to wit, for a period of 30 years and upwards.

That the Michigan Consolidated Gas Company, and its predecessor, the Detroit City Gas Company, have been and now are, subject to the jurisdiction of this Commission, and that this Commission has and does fix and prescribe the rates which they may charge for their services.

That the regulations and schedules of rates of the Michigan Consolidated Gas Company are on file with this Commission, and that it has obtained all requisite authority and approval under the laws of the State of Michigan to carry on its business within the State and particularly within the Detroit District.

7. It has not sufficient information to form a belief as to the allegations contained in paragraph 7 and therefore leaves plaintiff to its proof.

8. Answering paragraph 8, it admits the allegations therein contained, except the following allegations:

(a) That prior to August 20, 1945, the Ford Motor Company solicited a contract with the Michigan Consolidated Gas Company to purchase a maximum of 50,000,000 cubic feet of gas per day;

(b) That the Michigan Consolidated Gas Company refused to enter into such a contract, claiming it could only supply a maximum of only 15,000,000 cubic feet of gas daily, for the reason that it was at the same time [fol. 56] furnishing 10,000,000 cubic feet of gas daily to the Great Lakes Steel Corporation;

(c) That the Ford Motor Company then approached Panhandle Eastern Pipe Line Company and solicited from it a contract for the furnishing of its requirements of natural gas over and above that which could be furnished by Michigan Consolidated Gas Company;

(d) That such arrangement was necessary so that the Ford Motor Company might be furnished with its requirements of natural gas for manufacturing purposes.

As to the exceptions, it is without information to form a belief and therefore leaves plaintiff to its proof of such of them as the court may determine to be material to these proceedings.

9. It admits the allegations of paragraph 9, excepting the allegation that the defendant Commission wrote a letter to the Panhandle Eastern, threatening to take action to prevent the Panhandle Eastern from furnishing to Ford Motor Company natural gas.

As to the exception, it admits that it wrote a letter to the plaintiff and that a true copy of said letter is attached to the Bill of Complaint marked "Exhibit B."

10. It admits the allegations of paragraph 10, excepting the allegation that the hearing was not upon the complaint of the Michigan Consolidated Gas Company and was upon complaint of the defendant Commission.

As to the exception, it denies such allegation.

Further answering paragraph 10, it avers that complaint was made to the Federal Power Commission by the Michigan Consolidated Gas Company, concerning the direct sales [fol. 57] of natural gas by the Panhandle Eastern Pipe Line Company to industries within the Detroit District, and more especially to the Ford Motor Company, and that the Federal Power Commission fixed January 7, 1946, as the date and Washington, D. C., as the place for the hearing of the complaint. The parties to the proceedings before this Commission were also parties to the proceedings before the Federal Power Commission, and this Commission believed that it would be accommodating the parties if they could be heard at the same time and accordingly it noticed its hearing for the same time and place. Upon being advised that the plaintiff objected to the venue, this Commission immediately renoticed its proceedings to be heard January 17, 1946, at the Hotel Fort Shelby in the City of Detroit, Michigan.

Further answering said paragraph 10, the Commission avers that the Federal Power Commission has heard and determined the complaint of the Michigan Consolidated Gas Company, which was noticed for hearing on January 7, 1946, and as a result thereof has by its order denied to Panhandle Eastern Pipe Line Company the right to serve the Ford Motor Company within the Detroit District, a copy of which order is in the possession of plaintiff, and to which reference is hereby made.

11. It admits the allegations of paragraph 11, excepting the allegation that defendant claimed it was necessary to know the facts before it could pass upon the Motion to Dismiss. As to such exception, it avers that it reserved



ruling upon the Motion to Dismiss until it had heard the testimony of the parties.

12. It admits the allegations of paragraph 12, excepting the allegation that the Commission suggested that the parties stipulate the essential facts. As to the exception, it avers that Mr. Yost, one of the attorneys representing [fol. 58] Panhandle Eastern Pipe Line Company, was the one who suggested that the parties might stipulate the essential facts.

13. It admits the allegations of paragraph 13, excepting the allegation that this Commission proceeded to make a determination upon the merits, in disregard of the status of the cause upon the pleadings.

As to the exception, it denies the same, and in support of said denial it will show that at the close of the hearing all the parties were given to understand that if plaintiff's Motion to Dismiss were overruled the Commission would proceed to determine the case on its merits.

14. It denies that its order is unreasonable or unlawful, and it denies that its order results in a taking of plaintiff's property, or that plaintiff has been denied due process of law. Further, it denies that its order violates either the constitution of the United States or the constitution of the State of Michigan.

(a) Answering sub-paragraph (a) of paragraph 14, it denies that its order of February 18, 1946, directed to the Panhandle Eastern Pipe Line Company affected any sales or deliveries in interstate commerce, and in the alternative it avers that such sales and deliveries as are affected by its order of February 18, 1946, are in intrastate commerce.

(b) Answering sub-paragraph (b) of paragraph 14, it denies the allegations therein contained, and in support of said denial it will show that if the sales and deliveries in question were in interstate commerce, this Commission would have power and authority to prescribe the rates applicable thereto, such sales having been expressly excluded by Congress from the "Natural [fol. 59] Gas Act" by section 1 (b) of said Act.

Further answering sub-paragraph (b) of paragraph 14, the Commission avers that the sales and deliveries affected

by its order of February 18, 1946, are sales and deliveries in intrastate commerce.

(c) Answering sub-paragraph (c) of paragraph 14, it avers that its order of February 18, 1946, affected only transactions in intrastate commerce.

Further answering sub-paragraph (c) of paragraph 14, it avers in the alternative that it has power and authority to fix and determine the rates and conditions of service for direct sales to industries.

(d) Answering sub-paragraph (d) of paragraph 14, it avers that when the plaintiff engages in the activities affected by the order of February 18, 1946, it acts as a public utility and as such is subject to the jurisdiction of this Commission. It denies that such jurisdiction imposes an unlawful burden upon interstate commerce.

15. It denies that the plaintiff is adversely affected by its order or any part thereof and it denies that said order is contrary to law or that said order is unlawful.

(a) Answering sub-paragraph (a) of paragraph 15, it denies that the plaintiff is engaged wholly in interstate commerce in the State of Michigan, and it avers that when the plaintiff engages in the activities affected by the order of February 18, 1946, it engages in intrastate commerce.

(b) Answering sub-paragraph (b) of paragraph 15, it avers that when the plaintiff engages in activities affected by its order of February 18, 1946, the plaintiff is acting as a public utility within the State of Michigan. [fol. 60] In the alternative it avers that if the activities affected by the order of February 18, 1946, are activities in interstate commerce they are subject to the power and authority of this Commission to prescribe rates and conditions of service.

(c) Answering sub-paragraph (c) of paragraph 15, it denies the same.

(d) Answering sub-paragraph (d) of paragraph 15, it denies the same.

Further answering sub-paragraph (d) of paragraph 15, it avers that the activities of the plaintiff affected by this

Commission's order of February 18, 1946, are activities in intrastate commerce; and, in the alternative, that if the activities of the plaintiff affected by the order of February 18, 1946, are activities in interstate commerce this Commission has power and authority to fix the rates and conditions of service pertaining to them.

Wherefore and inasmuch as the plaintiff has wholly failed to state a cause for action against the defendant, or any grounds for equitable relief, the defendant prays that the Bill of Complaint be dismissed.

Michigan Public Service Commission, By: S. A. Lund,  
Its Secretary.

John R. Dethmers, Attorney General, By: James W. Williams, Assistant Attorney General, Attorneys for Defendant Commission.

Business Address: 502 State Office Building, Lansing 13, Michigan. (Seal.)

[fol. 61] IN CIRCUIT COURT OF INGHAM COUNTY

ANSWER OF THE INTERVENOR MICHIGAN CONSOLIDATED GAS COMPANY—Filed April 12, 1946

Now comes the Michigan Consolidated Gas Company, Intervenor in the above entitled cause by virtue of an order of this court entered March 27, 1946, by its attorneys, Angell, Turner, Dyer & Meek (Park Chamberlain and Henry A. Montgomery of Counsel), and saving and reserving unto itself full benefit of every objection and exception thereto whatsoever makes answer to said bill of complaint as follows:

1. Intervenor admits the allegations contained in paragraph 1.

2. Intervenor admits the allegations contained in paragraph 2, except that it denies that the plaintiff neither produces nor purchases any of such gas in the State of Michigan. As to said allegation, it alleges as follows:

(a) That on January 18, 1943, plaintiff made application to the Michigan Public Service Commission that it be granted immediate authority to construct a field gathering line for the transportation or conveying of



natural gas from the wellhead of J. C. Turner Well No. 1 to its main transmission line, and to transport said gas from said source to meet the needs of industries in Albion and Battle Creek, and that on January 18, 1943, the Michigan Public Service Commission entered an order authorizing a temporary connection of said well with the 12-inch pipe line of Panhandle Eastern known as the "West Line" or "Kalamazoo [fol. 62] Line." That in conformity with the order, a temporary gathering line was constructed and plaintiff purchased and received delivery into said line of 3,713,000 cubic feet of gas produced in Michigan from the Continental Oil Company Well. Intervenor further alleges upon information and belief that plaintiff has been, and is now, actively engaged in attempting to discover and develop natural gas producing wells in the State of Michigan.

(b) That on or about the 30th day of April, 1941, plaintiff entered into a contract with Consumers Power Company to furnish the natural gas requirements of Consumers Power Company in six of its operating divisions, less such natural gas as Consumers Power Company produced or purchased in Michigan and pumped into the Northern terminus of the 12-inch transmission line of plaintiff (known as plaintiff's "North Line"), situated about eight miles west of the Village of Zilwaukee, Michigan; that the northernmost point of delivery by plaintiff on its "North Line" was for the Flint division of Consumers Power Company at a point near the corporate limits of the City of Flint; that in compliance with the terms of said contract, Panhandle constructed and now operates approximately 45.7 miles of 12-inch pipe line running northwesterly from the point of delivery at Flint to the terminus above described, where it connects with transmission lines owned and operated by Consumers Power Company; that since November, 1942, Consumers Power Company has pumped and delivered into said "North Line" large quantities of natural gas, all of which was produced from wells within the State of Michigan, [fol. 63] and was thereby commingled with the natural gas transported into the State by plaintiff; that plaintiff has transported and delivered such commingled gas

to the customers of Consumers Power Company for compensation under the terms and provisions of said contract of April 30, 1941.

3. Intervenor admits the allegations of paragraph 3, except the conclusion expressed in the last three lines thereof as follows: "thereby fully complying with the police powers of the state, the defendant's only right to regulate being only insofar as the police powers reserved to the state were involved," which intervenor expressly denies. Further answering said paragraph, intervenor alleges that all of the properties of plaintiff traversing the several states, including the State of Michigan, and used in the transportation, delivery and distribution of natural gas, have been voluntarily devoted and dedicated by plaintiff to public use, and are facilities with which plaintiff has undertaken to supply a public service which in all respects, including method of operation, rates and charges, is subject to regulation by the various public authorities having jurisdiction, including, as to all local business, the Michigan Public Service Commission.

4. Intervenor denies the allegations of paragraph 4, except that it admits that all the plaintiff's sales to local distributing companies for resale and to the two industrial customers referred to in paragraph 2 of said bill of complaint are made under individual contracts.

Further answering said paragraph, intervenor alleges that in 1941 plaintiff formulated a policy of taking over and serving directly all such industrial customers as it could obtain "up and down its line" throughout the various states traversed, and that this policy, publicly announced [fol. 64] and declared by plaintiff on numerous occasions, has been acted upon continuously since that time; that at open hearings before the Common Council of the City of Detroit, held in the council chamber in the City Hall in the City of Detroit on February 21, 22 and 23, 1945, it was publicly announced by the chief executive officer of plaintiff that plaintiff was ready, able and desirous of selling gas to the industries of Detroit at a lower price than they were then paying, and that in addition plaintiff would pay the City of Detroit a reasonable rental for the use of any streets necessary for crossing or rights of way; that in pursuance of the policy above described plaintiff has for several years maintained an office in the City of

Detroit in charge of an employee, who works under the direct supervision of the manager of the New Business Department of plaintiff and whose duties specifically include the solicitation of new industrial business within the states of Michigan and Indiana; that in the performance of such duties he has made numerous calls upon various industries located in the City of Detroit and elsewhere in the states of Michigan and Indiana, and in such work has from time to time been accompanied and actively assisted by the manager of said department; that as a result of its efforts to make effective the policy above described plaintiff has from year to year increased the number of its direct industrial customers, the industries directly served in 1945 along its entire line numbering 27.

5. Intervenor admits the allegations of paragraph 5, except the allegation that plaintiff has never sold and does not sell in the State of Michigan any gas to residential or commercial consumers as such. As to this allegation, intervenor has no knowledge sufficient to form a belief, [fol. 65] and therefore neither admits nor denies the same, but leaves plaintiff to its proof.

6. Intervenor admits the allegations of paragraph 6, except that it denies that it is supplying gas within the State of Michigan under a rate schedule filed with the Federal Power Commission.

Further answering said paragraph 6, intervenor alleges that it is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and is a public utility engaged in the business of supplying natural and manufactured gas to the public for domestic, commercial and industrial use within certain districts in the State of Michigan. That one of the districts served by it comprises the cities of Detroit, Hamtramck, Highland Park, Dearborn, River Rouge, Grosse Pointe, Melvindale, Wyandotte, Lincoln Park, and twenty-two contiguous or adjacent villages or townships in Wayne County, said territory being commonly known and hereinafter referred to as the "Detroit District." That another district served by it comprises the City of Ann Arbor and its environs, and is known as the "Ann Arbor District." Intervenor obtains its entire supply of natural gas furnished by it to its customers within both the Detroit and Ann Arbor Districts from plaintiff, taking delivery thereof for the



Detroit District at the terminus of Panhandle's main transmission line in Melvindale, Michigan, and for the Ann Arbor District at a point on Panhandle's main transmission line near Carleton, Michigan. All of said gas is sold by intervenor under regulations and schedules of rates filed with and approved by the Michigan Public Service Commission.

7. Answering paragraph 7, intervenor has no knowledge sufficient to form a belief, and therefore neither admits [fol. 66] nor denies the allegations contained therein, but leaves plaintiff to its proofs.

8. Intervenor admits the allegations of paragraph 8 that it furnishes natural gas to the Ford Motor Company under a contract calling for a maximum delivery of 15,000,000 cubic feet per day, and that plaintiff and the Ford Motor Company executed a contract dated August 20, 1945, a copy of which contract is attached to the bill of complaint and marked Exhibit "A." Intervenor denies that prior to August 20, 1945, it was solicited by Ford Motor Company to make a contract to furnish 50,000,000 cubic feet of gas per day, and it denies that it refused to enter into such a contract. As to the allegation that it claimed it could only supply a maximum of 15,000,000 cubic feet daily "for the reason that it was at the same time furnishing 10,000,000 cubic feet of gas daily to the Great Lakes Steel Corporation," intervenor states the fact to be that it was then selling no interruptible gas to the Great Lakes Steel Corporation whatever, being prohibited from doing so by restrictions imposed by the War Production Board, and that its first delivery under its contract with the Great Lakes Steel Corporation took place on October 1, 1945. Intervenor further states that prior to August 20, 1945, the Ford Motor Company was restricted by the War Production Board to a total of 9 $\frac{1}{4}$  million cubic feet per day, and a contract for a larger amount would have been futile until such restriction was removed, and, further, that Ford Motor Company had never taken, prior to August 20, 1945, more than a small part of the daily maximum provided by its contract.

As to all other allegations of said paragraph, intervenor has no knowledge sufficient to form a belief, and therefore neither admits nor denies the same, but leaves plaintiff to its proofs.

[fol. 67] 9. Intervenor admits the allegations contained in paragraph 9, except that as to the allegation that defendant Commission wrote a letter to the plaintiff threatening to take action to prevent the plaintiff from furnishing natural gas to the Ford Motor Company, this intervenor has no knowledge sufficient to form a belief and therefore neither admits nor denies same, but leaves plaintiff to its proofs.

Further answering said paragraph, intervenor alleges that plaintiff has adopted a policy of making direct sales to ultimate industrial consumers; that in keeping with such policy it holds itself out as being willing and ready to supply natural gas to any industrial consumer which it is practical to reach by extension of its transmission lines; and that the proposed sale to the Ford Motor Company, as evidenced by plaintiff's Exhibit "A" attached to the bill of complaint, is but an additional step in the carrying out of such plan and purpose.

10. Intervenor admits the allegations of paragraph 10, except that it denies the allegation that the hearing was held upon complaint made by the defendant and not upon the complaint made by this intervenor.

Further answering said paragraph, this intervenor alleges that in its complaint filed with the defendant Commission it asked that said Commission institute an immediate investigation of the policies of Panhandle and its activities and conduct in relation to the furnishing and sale of natural gas to the Ford Motor Company and other industrial consumers in the State of Michigan, and particularly within the territory now served by this intervenor, and that said Commission take appropriate action to restrain and enjoin Panhandle from further proceeding with the extension of its facilities or the furnishing or sale of natural gas to the Ford Motor Company or to any [fol. 68] other consumer or consumers in the territory now served by this intervenor without the requisite authority and approval of said Commission, and that the order of said defendant Commission of December 21, 1945, referred to in said paragraph 10, was made in pursuance of the complaint so filed.

11. Intervenor admits the allegations of paragraph 11, excepting the allegation that defendant Commission claimed it was necessary to know the facts before it could

pass upon plaintiff's motion to dismiss. Intervenor alleges that the ruling of the Commission on this point was as follows:

"The motion advanced by counsel for Panhandle to dismiss will be taken under advisement and the motion will be decided when we have heard the facts upon which the complaint is based in this case."

12. Intervenor admits the allegations of paragraph 12 that a stipulation of fact was agreed upon by and between the parties and filed with the Commission. It admits that by entering into said stipulation plaintiff has not waived the benefit of its motion to dismiss heretofore filed in the proceedings before the defendant Commission. It denies that the Commission suggested that the parties stipulate the essential fact and alleges, on the contrary, that after objections by counsel for the Commission to the filing of affidavits and counter-affidavits as a method of trying the issue, the Chairman of the Commission asked its own counsel if in his opinion a stipulation of fact would be satisfactory, whereupon, after some further colloquy, Mr. Yost, one of plaintiff's counsel, suggested that an effort be made to stipulate the facts.

[fol. 69] Further answering said paragraph, intervenor admits that plaintiff never formally filed a general appearance in the proceedings before the Commission, but alleges that near the conclusion of the testimony it in fact entered into certain stipulations and agreements which in effect constitute a general appearance, said stipulations and agreements being as follows:

"Mr. Dyer: Let me see if I understand what this situation is here.

"As I understand it, these stipulations of fact and evidence are unqualifiedly agreed to and become a part of the record in any appeal on the decision overruling your motion to dismiss.

"If you do not appeal, or if you do appeal and your appeal is overruled, then this case, this proceeding, may be considered as submitted on the record now presented.

"Mr. Jennings: That is right.

"Mr. Williams: In other word, there will not be any need for any further hearing.



"Mr. Jennings: No.

"Mr. Williams: The facts of this proceeding will constitute the record without any need for any further hearing.

"Mr. Jennings: That is right.

\* \* \*

"Mr. Williams: I feel that I have been assured that there will be no need, in the event that it be determined lawfully that this Commission has jurisdiction, to hold any other hearings on this matter. I think the matter has been heard and I think that I have been so assured.

[fol. 70] "Mr. Dyer: And that the Panhandle Eastern Pipe Line Company will regard it as submitted on this record subject to our stipulating to additional matters which we will offer to the Commission.

"Mr. Jennings: Yes. I have stated on the record my position and I understand that this is agreeable to you all.

"Mr. Dyer: And it may be understood then and agreed between all the counsel here that paragraph 1 on page 1, and paragraph 5, on page 4 (referring to the stipulation of fact filed in said proceeding) are amended to conform to the stipulation now appearing on the record, as a result of this oral discussion?

"Mr. Jennings: Yes.

"Mr. Williams: That is, of course, acceptable to me."

All other allegations of said paragraph 12 are denied. 13. Intervenor admits the allegations of paragraph 13, except it denies the allegations that the Commission proceeded to make a determination on the merits in disregard of the status of the cause upon the pleadings.

Further answering said allegation, it alleges that it was stipulated and agreed, as in the preceding paragraph of this answer set forth, that if plaintiff's motion to dismiss be overruled, the Commission should proceed to determine the case on its merits.

14. Intervenor denies all the allegations contained in the introductory paragraph of paragraph 14.

(a) As to subparagraph (a) of said paragraph 14, intervenor denies that the Commission's order of

[fol. 71] February 18, 1946, directed to the Panhandle Eastern Pipe Line Company, was by its terms applicable to any sale or delivery in interstate commerce, but on the contrary avers that the sales and deliveries of plaintiff affected by its order of February 18, 1946, were sales and deliveries in intrastate commerce.

(b) As to subparagraph (b) of said paragraph 14, intervenor denies the allegations therein contained other than those contained in the first sentence of said subparagraph. As to such allegations intervenor has no knowledge sufficient to form a belief, and therefore neither admits nor denies the same but leaves plaintiff to its proofs.

Further answering said subparagraph, intervenor alleges that if the sales and deliveries in question were in interstate commerce, defendant Commission would have power and authority to prescribe the rates applicable thereto, such sales having been expressly excluded by Congress from the Natural Gas Act, so-called, by Section 1-b of said Act.

(c) As to the allegations of subparagraph (c) of said paragraph 14, intervenor denies the allegations therein contained, excepting that as to the allegation that "plaintiff has not purported to keep books, accounts, papers or records in the manner required under the regulations of the Michigan Public Service Commission for public utilities subject to the jurisdiction thereof," intervenor has no knowledge sufficient to form a belief and therefore neither admits nor denies same but leaves plaintiff to its proofs.

[fol. 72] (d) As to subparagraph (d) of said paragraph 14, intervenor denies the allegations therein contained.

Further answering said subparagraph, intervenor alleges that when the plaintiff engages in the activities covered by the Commission's order of February 18, 1946, it acts as a public utility, that as such it is subject to the jurisdiction of said Commission, and that such jurisdiction imposes no unlawful burden upon interstate commerce.

15. Intervenor denies all the allegations contained in the introductory paragraph of paragraph 15.

(a) As to subparagraph (a) of said paragraph 15, intervenor denies the allegations therein contained.

Further answering said subparagraph, intervenor alleges that the acts of plaintiff of which complaint was made, and which are referred to in the Commission's order of February 18, 1946, constitute the doing of a local business within the State of Michigan and subject plaintiff to the jurisdiction of the Michigan Public Service Commission.

(b) As to subparagraph (b) of said paragraph 15, intervenor denies the allegations therein contained.

Further answering said subparagraph, intervenor alleges that plaintiff is a public utility within the meaning of the Michigan statutes applicable thereto and that it has been conducting a local business within the State of Michigan.

(c) As to subparagraph (c) of said paragraph 15, intervenor denies the allegations therein contained.

[fol. 73] (d) As to subparagraph (d) of said paragraph 15, intervenor denies the allegations therein contained.

Further answering all of the allegations of said paragraph 15, intervenor avers that the activities of plaintiff within the State of Michigan constitute carrying on of a local business in said state, and as such are subject to the jurisdiction of the Michigan Public Service Commission, and that if any or all of said activities should be construed to be interstate, as to such interstate activities defendant Commission has power and authority to fix the rates and conditions of service pertaining thereto.

Intervenor further alleges that said bill of complaint fails to state a cause of action against the defendant, and fails to state any ground for equitable relief. Wherefore, intervenor prays that said bill of complaint be dismissed.

Michigan Consolidated Gas Company, By Angell,  
Turner, Dyer & Meek, Its Attorneys.

Park Chamberlain, 3224 Bankers Building, 105 West  
Adams Street, Chicago 3, Illinois.

Henry A. Montgomery, 3955 Penobscot Building, Detroit  
26, Michigan. Of Counsel.



[fol. 74] IN CIRCUIT COURT OF INGHAM COUNTY

PLAINTIFF'S REPLY TO ANSWER OF DEFENDANT COMMISSION—  
Filed April 24, 1946

The plaintiff herein, for reply to the new matter appearing in the answer of the defendant Commission to plaintiff's bill of complaint, says:

1. In reply to Paragraph 2 of defendant Commission's answer, the plaintiff avers that subsequent to April, 1943, it has not at any time purchased any natural gas in the State of Michigan. It admits that it has drilled two test holes in the State of Michigan in exploration for natural gas, but has produced no natural gas as a result of said drilling; and avers that the fact that it has made an exploration in the State of Michigan for natural gas does not pertain to the issue involved in this cause.

2. In reply to Paragraph 4 (a), (b), (c) and (d) of defendant Commission's answer, the plaintiff avers that the statement of powers and purposes of the Interstate Pipe Line Company is not material to any issue in this cause; that it is only the powers which are actually exercised within the State of Michigan which have any materiality.

3. In reply to Paragraph 4 (e) of defendant Commission's answer, the plaintiff denies that it is the declared policy of Panhandle Eastern Pipe Line Company to take over and serve directly such industrial customers as it may obtain, but avers that it has a right serve industrial customers directly in interstate commerce without authority [fol. 75] of the defendant Commission. It also denies that the plaintiff has been soliciting industrial business in competition with the local public utilities, and avers that the purpose of representatives of the plaintiff in visiting industrial businesses is to promote a demand for natural gas from those industries which its local utility customers can or may serve, and by that means to indirectly increase its own business by larger sales to local utilities; that in situations such as existed in the Ford Motor Company case, where the local public utility refuses to meet the demands of an industrial customer, the plaintiff is ready and willing, within its capacity, to serve such members of the public.

4. In reply to Paragraph 12 of the defendant Commission's answer, the plaintiff denies the allegations therein contained.

5. In reply to Paragraph 13 of the defendant Commission's answer, plaintiff avers that throughout the case plaintiff reserved its position that it was only proceeding upon the motion to dismiss, and the only understanding between the parties at the close of the case was that the stipulated facts might be used upon a hearing on the merits if, upon an appeal from the order on the jurisdictional question, the plaintiff did not prevail and entered a general appearance, or, in the alternative, if the plaintiff did not appeal from an order by the Commission holding it had jurisdiction and failed to take any further steps, the Commission might consider the stipulation of facts.

6. In reply to Paragraph 14 (a), (b), (c) and (d) of the defendant Commission's answer, plaintiff denies the allegations therein contained.

[fol. 76] 7. In reply to Paragraph 15 of the defendant Commission's answers, subparagraphs (a), (b) and (d), plaintiff denies the allegations therein contained.

Panhandle Eastern Pipe Line Company, Plaintiff,  
By Clayton F. Jennings, One of Its Attorneys.

Shields, Ballard, Jennings & Taber, Attorneys for Plaintiff, By Clayton F. Jennings, 1400 Olds Tower, Lansing 8, Michigan.

#### IN CIRCUIT COURT OF INGHAM COUNTY

PLAINTIFF'S REPLY TO ANSWER OF INTERVENOR, MICHIGAN  
CONSOLIDATED GAS COMPANY—Filed April 24, 1946

The plaintiff herein, for reply to the new matter appearing in the answer of the intervenor Michigan Consolidated Gas Company to plaintiff's bill of complaint, says:

1. In reply to Paragraph 2(a) of intervenor's answer, plaintiff avers that it only purchased gas from the J. C. Turner Well No. 1 between the period of January 18, 1943 to April, 1943, and since April 1943, it has not purchased any natural gas within the State of Michigan. It further avers that said allegations have no materiality as to any issue in this cause.

[fol. 77] 2. In reply to Paragraph 2 (b) of intervenor's answer, plaintiff denies that it has transported natural gas for compensation for the Consumers Power Company, and further avers that the allegations in said paragraph have no materiality in this cause.

3. In reply to Paragraph 3 of the intervenor's answer, plaintiff denies that it has voluntarily devoted and dedicated its pipelines to public use, but avers that said pipe lines were constructed for the purpose of transporting natural gas, a commodity in interstate commerce, to its customers in the several states, and denies that the Michigan Public Service Commission has any jurisdiction whatsoever over said facilities except insofar as the police powers reserved to the State have application.

4. In reply to Paragraph 4 of intervenor's answer, plaintiff avers that the principal purpose of visiting industrial businesses was to increase the demand for gas from the industries which its local utility customers can or may serve, and by that means to indirectly increase its own business by larger sales to local utilities; that as to industries which were not being served by a public utility or whenever the public utility was unwilling to furnish the demands, the plaintiff has been ready and willing within its capacity to serve such members of the public.

5. In reply to Paragraph 9 of intervenor's answer, the plaintiff denies the allegations therein contained.

6. In reply to Paragraph 10 of intervenor's answer, the plaintiff denies the affirmative allegations therein contained.

7. In reply to Paragraph 11 of intervenor's answer, the plaintiff denies the inference that there was a ruling upon [fol. 78] the plaintiff's motion prior to the decision in this cause.

8. In reply to Paragraph 13 of intervenor's answer, the plaintiff denies that it was stipulated and agreed that if plaintiff's motion to dismiss was overruled, the Commission should proceed to determine the case on the merits. It was stipulated, as shown by the record, that the Commission could determine the case on the merits only after an appeal on a decision overruling the motion to dismiss, or upon the failure of the plaintiff to appeal from a decision overruling the motion to dismiss.



9. In reply to Paragraph 14 (a), (b) and (d) of intervenor's answer, the plaintiff denies the allegations therein contained.

10. In reply to Paragraph 15 (a), (b) and (d) of intervenor's answer, the plaintiff denies the affirmative allegations therein contained.

Panhandle Eastern Pipe Line Company, Plaintiff,  
By Clayton F. Jennings, One of Its Attorneys.

Shields, Ballard, Jennings & Taber, Attorneys for Plaintiff,  
By Clayton F. Jennings, 1400 Olds Tower, Lansing,  
Michigan.

[fol. 79] IN CIRCUIT COURT OF INGHAM COUNTY

CASE ON APPEAL

(Signed and Filed March 7, 1947)

(This cause came on for hearing before the Honorable Paul G. Eger, Circuit Judge for the County of Ingham, on May 13, 1946. The plaintiff was represented by Shields, Ballard, Jennings & Taber, Clayton F. Jennings appearing, and Samuel H. Riggs. Defendant was represented by John R. Dethmers, Attorney General of the State of Michigan, James W. Williams, Assistant Attorney, appearing. The intervening defendant, Michigan Consolidated Gas Company, was represented by Angell, Turner, Dyer & Meek, Clifton G. Dyer appearing. Thereupon the following proceedings were had.)

#### OPENING STATEMENT FOR PLAINTIFF

Mr. Jennings: May it please the court, I will make a somewhat detailed opening statement so as to inform the court of the situation and the issues.

The Panhandle Eastern Pipe Line Company is a corporation organized under the laws of the State of Delaware. It is admitted to do business in the State of Michigan.

It is engaged in the business of producing, buying and transmitting natural gas from the States of Texas, Oklahoma and Kansas into the State of Michigan, and into and through all the intervening states.

It extended its operations into Michigan in the year 1941. At that time it extended a pipe line owned by a company

which is wholly owned by it from the Michigan-Ohio line up into Michigan and into Washtenaw County. At that point it extended the line west to Kalamazoo and a line east and north to Zilwaukee, Michigan. At Melvindale the Michigan Consolidated Gas Company tapped on to this line and transmitted gas into what is known as the Detroit [fol. 80] area in this case, and that includes the City of Detroit and all the surrounding towns,

Its two principal customers in Michigan are the Michigan Consolidated Gas Company and the Consumers Power Company. It furnishes a part of the gas that the Michigan Consolidated Gas Company distributes throughout the Detroit area. That company also produces a large quantity of artificial or manufactured gas.

It furnishes natural gas to Consumers Power Company to serve the eastern portion of Michigan; that is, the cities of Bay City, Saginaw, Flint, Pontiac, and the smaller towns along that line. It also furnishes other utilities, such as Adrian, Kalamazoo and such places.

It has never constituted itself as a common carrier of gas or anything other than a private utility. All its furnishing of gas is pursuant to contracts entered into individually with these public utilities located in the various cities.

Aside from that it furnishes two industrial concerns: One at Albion, through an arrangement with the local utility; and one at South Lyon where there is no local utility to serve the public.

This question here comes about because of a contract entered into with the Ford Motor Company of Dearborn. The main line of the Panhandle Eastern Pipe Line Company passes through the Ford property at Dearborn and close to its manufacturing operations.

Prior to the close of the war, but after the European phase of it had ended, the Ford Motor Company, as a part of its plan of reconversion, solicited the purchase of natural gas from the Michigan Consolidated Gas Company. They already have a contract with that company to furnish [fol. 81] some fifteen million cubic feet a day. Ford desired an additional fifty million cubic feet a day to carry on its reconversion program, intending the use of gas furnaces instead of the usual coal fed or oil fed furnaces.

Michigan Consolidated was not in a position to enter into a contract for furnishing that extra quantity of gas, so negotiations were entered into with the Panhandle Eastern

Pipe Line Company to furnish the required gas. The contract was drawn on August 20, and by late October had been executed by all the parties, whereby the Panhandle Eastern Pipe Line Company would furnish, on an interruptible basis, fifty million cubic feet of gas a day, which would be over and above that furnished by Michigan Consolidated Gas Company.

Under this contract the Ford Motor Company was to furnish the necessary lines to connect up with the Panhandle Eastern Pipe Line Company, and also run a line to its plant. All that Panhandle was to do was to set a meter and regulation station on its pipe line so as to measure the amount of gas that Ford would purchase.

Ford commenced the construction of its necessary lines to connect up with ours, and this was observed by the Michigan Consolidated Gas Company, and I presume they passed the information on to the Michigan Public Service Commission. At all events, a threatening letter was sent to the Panhandle Eastern Pipe Line Company inquiring into their operations, and pointing out various Michigan statutes that might prevent such a direct sale to industry.

About this time the Michigan Consolidated Gas Company filed a complaint with the Michigan Public Service Commission. Under proper procedure that complaint might [fol. 82] have been set for hearing. It was not. The Michigan Public Service Commission filed a complaint again, its old complaint, against the Panhandle Eastern Pipe Line Company, and noticed it for hearing in Washington, D. C., under the assumption that since the Federal Power Commission was holding a hearing in January at Washington, D. C., that the two matters could be heard together.

For various reasons they could not be, and were not. In the meantime Panhandle Eastern Pipe Line Company had filed an action in this court under a declaratory judgment, and this court, by Judge Coash, held that the hearing noticed before the Michigan Public Service Commission should go forward first; and the declaratory judgment action is now pending in the Supreme Court, and has been held in abeyance pending the hearing of this action.

So this matter then came on for hearing in the City of Detroit upon the complaint of the Michigan Public Service Commission, and special appearance and motion of the Panhandle Eastern Pipe Line Company. As far as the pleadings, that is the extent of the pleadings in the join-



ing of the issues between the Michigan Public Service Commission and the Panhandle Eastern Pipe Line Company.

As I stated, we appeared specially in Detroit and presented our motion, where it was argued quite fully on behalf of the Panhandle Eastern Pipe Line Company. No argument has been offered on behalf of the Michigan Public Service Commission or the Intervenor here, the Michigan Consolidated Gas Company, in opposition to that motion.

The Commission expressed a desire to have some proof before it passed on the motion, and the matter was adjourned upon the suggestion of the Commission and by [fol. 83] agreement of counsel that the facts be stipulated insofar as they could be in support of the motion or in defense of the motion.

The parties were very successful in stipulating the facts, and after a month, even though it had only been adjourned for a week, it was to come on for hearing. The Commission found it necessary from time to time to adjourn the hearing on its own motion. At that time the stipulation was presented and some proofs were taken.

The Panhandle Eastern Pipe Line Company has maintained its position throughout, and does so here, that we are only appearing specially. We are appearing for the purposes of the motion to dismiss, on the ground that the Michigan Public Service Commission has no jurisdiction over the subject matter.

Now, my statement of facts is clear that all the natural gas that we furnish to any customer in the State of Michigan is furnished through interstate commerce. Natural gas is a commodity in interstate commerce, and it is furnished as a commodity in interstate commerce to the Michigan Consolidated Gas Company and to the other customers I have mentioned, and under its contract with the Ford Motor Company it is to furnish it gas in interstate commerce.

It is our position—

Mr. Williams (interposing): Will you pardon the interruption? I understood you to say that all that you are here for on this morning is the question as to whether or not the Michigan Public Service Commission acted properly and lawfully in overruling your motion to dismiss.

Now, is that your position, Mr. Jennings? Did I understand you correctly?



**52**

**490**

**MICRO**  
TRADE

**CARD**  
MARK **(R)**



[fol. 84] Mr. Jennings: I think you did. Whether you stated it correctly or not I would not say. But we are here on the same situation as we were before the Michigan Public Service Commission; and, of course, this court takes this case de novo.

The Court: Well, Mr. Jennings, you are questioning, of course, the jurisdiction of the Commission?

Mr. Jennings: That is right.

The Court: And that in turn, of course, hinges upon whether or not the product is in interstate commerce.

Mr. Jennings: Whether it is in interstate commerce; and if the court finds that it is a commodity in interstate commerce and our contract calls for an interstate sale of that commodity, and then further finds that the Commission did not have jurisdiction over the subject matter, why, that decides every issue that could be before this court or any other court.

Mr. Williams: The reason I asked Mr. Jennings to state clearly his position here, we probably will have a question of this court's jurisdiction, if his position is that all he is presenting here is a question as to whether or not the Michigan Public Service Commission acted properly and lawfully when it overruled its motion to dismiss.

Now, I just am trying to get that question clearly stated upon the record, because, without interrupting Mr. Jennings more than is necessary at this time, it will present a question of jurisdiction of this court, and in this court, if that is his position.

Mr. Jennings: I don't think there should be any interruption of my statement. When I am through, why, there will be plenty of opportunity for counsel to ask questions or to make their statements.

At all events, the Commission at the hearing more or less disregarded the special appearance and the motion to dismiss [fol. 85], and proceeded to admit testimony and all kinds of testimony, whether it had any bearing upon the situation or not, resulting in a very voluminous and unnecessary record.

Following that it took the case under advisement, and wrote an opinion holding that it did have jurisdiction, and finding that the Panhandle Eastern Pipe Line Company was doing business in intrastate commerce, that it was a public utility, and that it was subject to regulation of the Michi-



gan Public Service Commission; and then proceeded to discuss and determine the case on its merits regardless of the fact that there had been no issue joined by its general appearance and motion on behalf of the Panhandle Eastern Pipe Line Company.

However, the question of jurisdiction will quite decidedly determine the entire issues that have arisen. That issue simply goes to the question of the right and power of a local or state administrative authority to control, regulate, and burden interstate commerce.

#### OPENING STATEMENT FOR DEFENDANT

Mr. Williams: Perhaps it is well to keep the record straight, even though some of the statements made by counsel may not be too material and a different answer may clearly appear upon the face of the record.

To illustrate: Counsel says that no argument in answer to the motion to dismiss before the Commission was made. I call attention to the proceedings of January 17, 1946, before the Commission, to where I personally took up from page 22 through page 28 saying something which I thought had bearing upon the motion to dismiss; and on the question in regard to the stipulation I call attention to the transcript before the Commission at this hearing.

Mr. Jennings: What page is that?

[fol. 86] Mr. Williams: The page that I called attention to was page 22 of the session of January 17.

Mr. Jennings: Well, there you simply request the Commission to take the motion under advisement.

Mr. Williams: Well, its purport can be weighed; if it becomes material, along with the other. And I call attention to page 273 of the transcript of the proceedings before the Commission of February 14 and 15, 1946, where this very question as to what action the Commission was going to take upon these stipulations was raised, because as the stipulation was originally worded it appeared that counsel had in mind that we go through all the taking of testimony there, and then if the Commission should overrule the motion to dismiss, then it be necessary to come back and march down the same street again and take all the testimony over again; which to me seemed to be an entirely useless proceeding, and I raised the question before the Commission, and it is all taken up at page 273 of the transcript before the Commission.

Now, the reason that I ask counsel to please clearly state his legal proposition here is because it may have a material effect upon the question as to whether or not this Court has jurisdiction; and it also may have a material effect upon the question as to whether or not his bill of complaint here states a cause for action.

Now, in our answer we raise those questions in the following language:

"Wherefore and inasmuch as the plaintiff has wholly failed to state a cause for action against the defendant, or any grounds for equitable relief, the defendant prays that the bill of complaint be dismissed."

[fol. 87] But in any event, those two grounds are always open in any proceedings before a court, because the question of jurisdiction can be presented at any stage of the proceedings; and likewise a question as to whether or not there has been stated a ground for complaint.

Before presenting some law upon those two questions, it would perhaps be well to retrace counsel's steps in saying how this question arose before the Public Service Commission.

The nature of the subject matter of transporting and selling gas is such that it is regulated by both the Federal government and the states in certain of its stages. Because of that there are proceedings before the Federal Power Commission from time to time in which it becomes necessary for representatives of our Commission to appear; and at those hearings before the Federal Power Commission on occasions the question has come up as to what the attitude and purposes of the Panhandle Eastern Pipe Line Company were concerning the direct sales of gas to industrial customers.

Mr. Oscar Morton, their rate man, for example, has testified before the Federal Power Commission on more than one occasion that the Panhandle Eastern Pipe Line Company's plans and intentions are to take over all of the direct industrial sales which they consider of sufficient volume to make it profitable for that company to handle directly. Those matters have been reported to the Michigan Commission.

In the State of Indiana, Panhandle Eastern Pipe Line Company began a program of direct sales to industry, and

there was a proceeding before the Indiana Public Service Commission concerning that question; and that came to the attention of the Michigan Public Service Commission.

[fol. 88] Then, as counsel stated, the Michigan Consolidated Gas Company learned of the activities of the Ford Motor Company in constructing a pipe line to connect with the Panhandle Eastern's transmission line; and that was called to the attention of the Michigan Commission. The Michigan Commission wrote a letter to Panhandle Eastern Pipe Line Company, calling its attention to certain Michigan statutes, and stating that it felt that if Panhandle was doing certain things, the scope of its duties included the carrying out of the purposes of those statutes.

The letter is in these proceedings. Counsel persistently refers to it as a threatening letter. As to whether or not it is a threatening letter, I am perfectly willing to let it speak for itself on its face.

The activities of the Ford Motor Company and the Panhandle continued.

The Court: What is the status of the Ford contract? Was the line completed on the Ford property, and is gas being furnished, or not?

Mr. Williams: Well, I understand no. I understand no, for two reasons: There was, as I will explain, a proceedings before the Federal Power Commission. The Federal Power Commission likewise order the Panhandle Eastern Pipe Line Company not to make this service, but for a different reason, which I will explain on the record in just a minute.

The Michigan Consolidated Gas Company filed a written complaint with the Michigan Public Service Commission, and at the same time it filed a written complaint with the Federal Power Commission, which is the Federal regulatory body having jurisdiction over the transmission of gas for resale.

The Federal Power Commission set its complaint down for hearing before it in Washington on January 7; and the [fol. 89] Michigan Commission, being well aware of the limitations as to its venue, knowing that it had no jurisdiction outside of the state, but from something that had been said being under the impression that it would be to the convenience of all of the parties if the facts were permitted to be developed upon a single record, gave notice that it would hear its complaint at the same time and place in Washington,



D. C. And on the side, perhaps, I should explain to the court that a number of the Federal statutes, such, for example, as that creating the Interstate Commerce Commission and the Federal Commission itself, permit cooperative proceedings between state commissions and federal bodies, under certain conditions.

After notice of the hearing on the Michigan complaint in Washington was given, Mr. Jennings came to the Commission's offices and raised an objection. When he did so, nobody quarreled with his position. We said that the Commission was of the idea it was accommodating somebody, and that if the Panhandle Eastern Pipe Line Company thought it was not being accommodated, it would re-notice the hearing within the State of Michigan at a convenient place for the parties; and they re-noticed the hearing for January 17 at the Fort Shelby Hotel in the Blue Room, in the State of Michigan.

We were at Washington attending the hearing before the Federal Power Commission, and representatives of the Panhandle Eastern Pipe Line Company came to this court, and through Judge Coash, obtained an injunction on some grounds, and filed a bill of complaint asking for a declaratory judgment.

The motion to dismiss was filed and was granted by the court. An appeal from that order of the court has been taken, and is now pending in the Supreme Court.

[fol. 90] When we filed our motion to dismiss the petition for declaratory judgment, we undertook to point at to counsel under the laws of this state what his legal remedy was, if he wanted to raise purely this question of jurisdiction. We called his attention to numerous cases that had been decided by the Michigan Supreme Court as to the proper legal method of presenting that question.

Now counsel has elected to pursue other remedies and that is why I consider it very material and necessary to have counsel state upon this record here, because he is the party that files the complaint, what jurisdiction of this court he is invoking, and precisely what question he is presenting to this court for decision, because this court is in a unique position so far as jurisdiction within the State of Michigan is concerned.

It has the equity jurisdiction that is common to all equity courts throughout the state; and naturally possessing that

jurisdiction in proper cases it can exercise it. It also has statutory jurisdiction. And early the question arose as to whether those two jurisdictions were distinct; and the Supreme Court, in the case of *In re Briggs*, 178 Michigan 28, held that there was a demarcation between the general equity jurisdiction of this court and its statutory jurisdiction, and that its statutory jurisdiction must be exercised strictly in accordance with its statutory authority.

Now, if that is a correct interpretation of the Supreme Court's holding, I feel it is incumbent upon counsel for the Panhandle Eastern Pipe Line Company to clearly point out to this court which jurisdiction it intends to invoke; and having invoked the jurisdiction, what specific question it intends to present, because there are certain holdings by the [fol. 91] Michigan Supreme Court by which they held, I believe properly so, that where only a question of law is presented for decision from the Michigan Public Service Commission, that the proper manner of doing it is by certiorari direct to the Michigan Supreme Court and not by a statutory appeal to this court.

There are two cases that bear upon that question, and they should be read together. They are Consumers Power cases. One is reported in 272 Michigan 213, and the other one is reported in 273 Michigan 184.

In that connection, while we are on that point, in the case of *Sparta Foundry Company v. Michigan Public Utility Commission*, 275 Michigan 562, at pages 567 and 568, the Supreme Court very carefully pointed out that appeals do not lie except as authorized by statute. They lie only from affirmative action on the part of the Commission. I may be that in some cases where the Commission has refused to act, action may be compelled, but this may not be done by appeal.

Now, there is more in the Sparta case than merely the question of negative orders. The Sparta case dealt with a reparation order of the Commission. There had been a rate proceedings before the Commission, and the Commission had adjusted the rates; and in conjunction with the rate proceedings there had been a prayer for reparation, and the Commission has statutory power to award reparation where it feels the record justifies such action on its part by disclosing that the past rates were exorbitant.

In the Sparta case it felt that that situation had not

existed, and therefore even though it made an adjustment of rate, it refused reparation over the past period; and it was that refusal of reparation which the party attempted to have this court review, and this court, Judge Carr presiding, [fol. 92] reviewed the action, which was the groundwork of the appeal to the Supreme Court. The Supreme Court there clearly pointed out that at least in this jurisdiction, from an order of that kind no appeal lies to this court.

Now, there are some other cases which indicate the proper method of reviewing a Commission decision as to jurisdiction. One such case is the case of the City of Detroit v. Michigan Public Utilities Commission, 288 Michigan 267, and the other is the case of Woodward v. Pere Marquette Railroad Company, 312 Michigan 67.

Now, in the first case, that is, in the City of Detroit case, the Commission had undertaken to act upon the complaint of Duncan McCrea and certain others against the then Detroit City Gas Company concerning its rates, and the City of Detroit and the Company raised the question as to whether or not the Commission had jurisdiction. The Commission held that it did have jurisdiction, and certiorari was taken to the Supreme Court and the Supreme Court held that the Commission had jurisdiction.

In the Woodward case the question was as to whether or not the Commission had jurisdiction to order railroads of this state to supply uniforms for trainmen. There was a statute upon the books that appeared to give that authority. The Commission held that it had no jurisdiction, and that was reviewed on certiorari and the Supreme Court sustained the holding.

So we rely, in asking this court to dismiss these proceedings, upon those two propositions: Lack of jurisdiction in the court; and failure to state a cause for action.

There has been a proceedings in chambers before the Michigan Supreme Court concerning the appeal from the [fol. 93] dismissal of the petition for declaratory judgment, and there the Justices indicated that they desired to pass upon these two cases together. That was my understanding of their action.

Acting upon that understanding, but not waiving the grounds that I have raised here, if the court elects to proceed as though this were a statutory appeal, we have brought in court, in accordance with the usual statutory proceedings,



the record made before the Commission, and I have them in court; and in accordance with the practice I file them with the court at this time.

The record before the Commission consists of the following; the pleadings before the Commission, consisting of the complaint made, and of the motion to dismiss; the notices of hearing.

The transcript of the proceedings before the Commission of January 17, 1946, which you have. Transcript of the proceedings before the Commission of February 14 and 15, 1946.

There was also incorporated by reference the testimony of Mr. Burnham before the Federal Power Commission, given before that Commission January 11, 1946.

Mr. Jennings: I object to that as not being a proper part of this record.

Mr. Williams: And reported on pages 489 through 508 of the transcript before the Federal Power Commission. I have in mind opening the transcript before the Commission and inserting those pages right in back of that transcript. That is the mechanical way to do it; and then I will take up the question as to whether or not it should be considered by this court.

Mr. Jennings: I have no objection to the mechanical part of it, but I do object to the subject matter.

(At this point Mr. Williams attached the excerpt of testimony referred to above to the back of the Commission transcript.)

[fol. 94] Mr. Williams: Continuing with what comprises the record before the Commission: There is the stipulation of fact between the parties, and the statement of evidence and stipulation between the parties and the exhibits. These were all contained within one bound volume.

Now, just on the mechanical side, Mr. Jennings, do you know of anything that I have overlooked that was before the Commission that should be before this court on this record?

Mr. Jennings: I think the opinion and order of the commission.

Mr. Williams: Well, the opinion and order of the Commission are attached to our bill of complaint, but I will be glad to include that.

Mr. Jennings: Well, what I meant was the record should show that you are filing that mechanically.

Mr. Williams: Yes, I will include that in the record.

The Court: Do you want these marked as exhibits?

Mr. Jennings: I think not, your Honor. As I understand the statute, this is simply filed, and the question of its receipt comes up as we go along.

The Court: All right.

Mr. Williams: Now, upon counsel's question as to whether or not the Burnham testimony before the Federal Power Commission should be received here, I point out that it is a part of the record before the Commission.

Counsel for plaintiff apparently is going upon an idea that this court has the authority and can change the record of the proceedings before the Commission. I know of no such authority in this court.

I do know of authority in this court, for example, where, if the Commission has wrongfully admitted testimony before it, which testimony clearly and materially affected the [fol. 95] results of the Commission; that on that ground this court could set aside perhaps the order of the Commission; but that is a different thing, a much different thing, from the power to change the record that was made before the Commission.

Why, by analogy, if counsel were right in his supposition, we could go before the Supreme Court and change the record made before this court. Clearly the Supreme Court can consider the record made before this court and say whether or not there was error committed, but it will act upon the record; it won't mutilate the record; it won't change the record. The record made before this court continues and remains this court's record. And on the same basis, the record made before the Commission, erroneous or otherwise, is the record of the Commission.

Now, if the error is material there and vitiates the order, the court would work upon the order, but not upon the record of the proceedings before the Commission. I have never heard of that being done as to any court, nor as to any administrative body. If counsel has any authority for his proposition, I certainly for one would like to see it.

On this question as to what is the nature or essence of the thing that we are considering, perhaps it might be well to call attention to the authority of the Commission.

From the very nature of such property as electricity and gas, and in view of its exercise, the answer has to depend considerably upon the question of local interest. In the

transmission of gas from the Panhandle field to the burner tips of a customer of the Michigan Consolidated Gas Company, there is no actual break in the transmission; and yet I do not believe that there is any attorney today that has [fol. 96] made any study of the law at all who is not of the opinion,—in fact, it might be called more than an opinion,—that that gas at that burner tip is in intrastate commerce and not in interstate commerce.

Now, the court must have in mind that I tried specifically and intentionally to choose a phase of the transportation where the questions are wholly settled. I don't believe it is open to doubt any more, or open to question any more but what the resale of gas to the ultimate consumer—and when I use the words "ultimate consumer" here now I mean the residential user, at the burner tips of that residential user—is in intrastate and not interstate commerce, even though that gas come from without the state.

Now, as a proposition of law I might go even further than that. I go that far because that is the situation in Michigan with the Michigan Consolidated Gas Company. I might illustrate with the Pennsylvania case and say that even though the local distribution was made by the company that brought the gas in from the outside; in other words, if Panhandle was distributing to the householder down in Detroit instead of the Michigan Consolidated, and brought that gas in from Texas, that commerce would still be subject to the jurisdiction of the local authorities.

Now, we have a case here where plaintiff contends first that it is selling to an industry in wholesale lots, and that sales to industries are not sales to ultimate consumers. That is one of its contentions; and the other contention is that it is not a public utility.

Now, we differ with both of those contentions. In my illustration a moment ago I intentionally and purposely limited the expression "ultimate consumer" to a householder who was using the gas in his residence at his burner tips; but normally the expression has no such limitation. [fol. 97] It includes just what it says, the ultimate consumer, whether that consumer be an industry or whether it be a householder or whether it be a store or whatever it may be; the one who consumes the gas at the burner tips is the ultimate consumer.

The other day when we had what might be called a pretrial conference—it wasn't such because all of the



parties weren't present—the question came up as to whether we would take any testimony before this court, and I understood as the result of what was said there that the material set forth in paragraph 4 of the Commission's answer would not be questioned as to correctly stating the facts, but that counsel for plaintiff would question their admissibility upon the grounds of materiality and other objectionable grounds that he had in mind.

The Court: You are referring to the allegation as to its general intent to serve other industries if possible?

Mr. Williams: I am referring to the scope of its charter powers.

This company, as it has been pointed out, was incorporated in the State of Delaware. At the time of its incorporation its name was The Interstate Pipe Line Company. Its name was changed by certificate of amendment from that to the Panhandle Eastern Pipe Line Company. It is on page 3 of the answer, Mr. Jennings.

Now, the corporation has been admitted to do business in Michigan. I assume that it claims here the power of eminent domain. I raise that question for counsel to answer as to whether or not they do make such claim.

The Court: How are we concerned with that.

Mr. Williams: We are concerned with that because we are concerned with the question as to whether or not this [fol. 98] company is in fact a public utility. If it claims the right of eminent domain, that might affect the answer to that question; and I ask an answer of counsel for the plaintiff as to what their position is in that regard.

Mr. Jennings: Well, that is a question that is entirely immaterial in any issue in this case, but to satisfy counsel's curiosity I will state that we have exercised the right of eminent domain in the State of Michigan.

The Court: You have?

Mr. Jennings: We have, yes.

Mr. Williams: Now, it is material for this reason, your Honor: Private property may not be taken for private use. That is a fundamental proposition of constitutional law. The taking of private property must be for a public use. Eminent domain may not be exercised by a private corporation. And that is why I consider it material to this issue; and that is also why I consider the powers of this corporation material to this issue.

Mr. Jennings: We exercised the rights given under Act 9 of the Public Acts of 1929, which was especially for the transmission of gas. I don't know whether it is a public utility.

Mr. Williams: ~~Going~~ ahead so we will know what counsel's position is upon the record in regard to paragraph 4 of the answer, not that it is necessary for me to determine whether or not it will be necessary to introduce evidence here, although I was unable to discover in the reply any denial of the allegations. It appears to me, from the allegations of that paragraph, that I will not make that material part of this record.

Mr. Jennings: What material are you speaking about, Mr. Williams?

[fol. 99] Mr. Williams: The statement of the powers and purposes of the Interstate Pipe Line Company contained in Certificate of Incorporation filed in the office of the Secretary of State of the State of Delaware on the 23rd day of December, 1929, a copy of which is in the possession of the plaintiff.

Mr. Jennings: Where is that?

Mr. Williams: That is in subparagraph (a) on page 3.

Mr. Jennings: I don't think we deny that but when you reach your part of the case it seems to me that that is the point at which we should take these questions up. It is a point of procedure now.

Mr. Williams: Well, do you intend to offer some proofs?

Mr. Jennings: No.

Mr. Williams: Well, that is why I thought this was the proper time to take it up. I didn't know that you were going to offer any proof.

Mr. Jennings: Well, we are not going to offer any new proof, but we certainly intend to go through this deposition and have the ruling of this court upon questions raised there; and I had thought, following my opening statement, that counsel for the other parties could then make their opening statement and that we could proceed in an orderly manner.

As it is now I am at a loss as to whether Mr. Williams is making an opening statement, whether he is making a motion to dismiss, or whether he is making an argument on the merits. But we certainly intend to go through these

proofs that are already on file now as a part of the record for the review of this court.

Mr. Williams: Well, I have considered that I have made a motion to dismiss. I have made an opening statement. I consider that counsel was not putting in any proofs, [fol. 100] so I was making an offer of proof at this time. Now counsel advises me that he does plan to offer some proof, and if that is true, why, then I suppose that I should await his offer of proof before making my offer. I will abide by that decision, if that is the decision.

Mr. Jennings: Well, when I said the other day that I would offer no proof, I meant no new proof that would require this matter to go back to the Commission.

The Court: Well, my understanding was that you people agreed as to certain facts as far as possible.

Mr. Jennings: Yes.

The Court: But there was some question as to whether or not certain of those facts were admissible.

Mr. Jennings: That is right.

The Court: And the question now is upon that as to whether you want to object to certain things that are in this record or this return, is that it?

Mr. Jennings: That is it. In making the stipulation each of us reserved a number of things so as to get together and agree that certain things were fact, whether they were admissible or not. We did accomplish a great deal and saved a lot of time. Mr. Dyer and Mr. Riggs and I worked that out.

The Court: Doesn't that get back to the question then as to the power of this court to rule upon the admissibility of matters and testimony taken before the Commission?

Mr. Williams: Your Honor, perhaps I didn't make myself clear. The matters that I am now calling to the attention of this court, they are in the files of the Commission but they were not specifically made a part of these proceedings. In other words, they were matters that the Commission would have known about in another capacity, [fol. 101] and in fairness to all the parties and to complete this record, we felt it should be spread upon this record here. Now, they were not specifically a part of the record before the Commission, and that is why I was proceeding as I have been in regard to just this part of the material.



Now, I understand that counsel did not question this material as to its existence and as to what it set forth, but he did question it as to its materiality to this proceeding and as to other objections that he might have to the admission of evidence.

Mr. Jennings: That is true.

Mr. Williams: That was my understanding.

Mr. Jennings: You are absolutely correct on that.

Mr. Williams: And I thought that I had reached the point where, with that understanding, it would be well to bring that question up.

Mr. Jennings: I think we must insist on making our own case first. We are plaintiffs here and the moving parties.

Mr. Williams: Counsel for the plaintiff has indicated a desire that the offer of the documents set forth in the paragraph in the answer which we have been talking about be deferred. I am willing to do that. Of course, I offered them, as I stated, at this time because I understood counsel had no offer of proof to make.

Going then to the facts underlying this situation, from a study of the record—and I have to put it in that form; if there is to be no further proof adduced here, the facts will have to appear from this record—it will appear, when these papers that we are talking about in the answer come in, that as far as the charter of the Panhandle Eastern Pipe Line Company is concerned, its corporate powers are those of a public utility. Within the state of Michigan, as has been stated by its counsel here, it has exercised the power [fol. 102] of eminent domain. Its agents, on numerous occasions and at numerous places, have stated that the purpose and intent of the company to be that it was going to make direct sales of gas to industries when the volume of the sale was sufficiently large in their opinion to make it profitable to do so.

It will show that they have acted upon those declarations by making a solicitation, both within and without the State of Michigan, of such business; and it will show that they have procured certain business of the character and kind we are now talking about, and are actually making delivery in some cases, and in this Ford case would be making delivery if it were not for the action of the Federal Power Commission and of the Michigan Public Service Commission.

Earlier I made mention of the Federal Power proceedings, and the fact that that Commission had forbidden this Ford sale. The Natural Gas Act, which is the title commonly used in referring to the Federal statute, only gives the Federal Power Commission jurisdiction over gas that is transmitted for resale. In other words, the gas that is transmitted to Detroit and then sold to the Michigan Consolidated Gas Company, the Federal Commission has no jurisdiction over the gathering or producing; it has no jurisdiction over the distribution to the ultimate consumers. Its jurisdiction is the transmission in Federal commerce.

Now, it based its order upon these propositions, as I understand: In order to construct the facilities for interstate transmission of gas it was necessary to secure a certificate from the Federal Power Commission. In petitioning for those facilities the Panhandle Eastern Pipe Line Company had said that they were to be used for certain purposes; that is, to serve certain customers. Many [fol. 103] of these facilities were built during the war-time where it had to be more or less specifically pointed out what the vital need for the facilities actually was; and in issuing the certificates for the facilities in some instances the Federal Power Commission had conditioned the use of the facilities, or, in short, they felt that the capacity within the existing facilities had been—

Mr. Jennings (interposing): Mr. Williams, are these things you intend to prove, or are you arguing the case? It is difficult for me to follow you. I don't know whether you are arguing or whether you intend to offer proof along that line.

Mr. Williams: Why, I might make an offer of the order of the Federal Power Commission, if you care to have it on the record.

Mr. Jennings: I thought we would start this case with an opening statement of what the parties intended to prove, and then argue when we got all through.

Mr. Williams: Well, perhaps I misunderstood, but I thought counsel referred to these proceedings before the Federal Power Commission. I won't pursue it any further if there are objections, and apparently there are.

Mr. Jennings: Well, I think instead of interpreting some order now, you should go into it when you offer it at the proper time.

Mr. Williams: You are objecting to the statement concerning the action of the Federal Power Commission?

Mr. Jennings: Yes, if that is a part of your argument.

The Court: Is the order in evidence?

Mr. Williams: The order is not in evidence.

Mr. Jennings: It is not in evidence.

[fol. 104] The Court: Well, I don't know whether we are here concerned with what the Federal Power Commission did or didn't do.

Mr. Jennings: I don't think we are concerned with that.

Mr. Williams: I don't plan to offer it, your Honor. I am just making a statement of what had happened before the Federal Power Commission. I understood counsel considered it was tied into these proceedings in some way. If he doesn't, I am content to rest on that, and I won't pursue the subject.

The Court: Well, it is of interest, but probably not material.

Mr. Jennings: I think we can furnish the order some time during these proceedings, so that perhaps it will save time, as part of the background, but not as a material matter of proof.

Mr. Williams: Well, with the understanding that counsel for plaintiff has something further to offer to the court, I feel that would conclude our opening statement.

I feel that the position of the Commission is very clearly set forth in its order, but at this time I again call upon counsel for plaintiff to state his position before this court, because I consider the answer to that question very material.

Mr. Jennings: If it please the court, in a few words I can answer this motion to dismiss.

The court will notice we start our bill of complaint by specifically stating that this is an action pursuant to Section 11042 of the Compiled Laws of 1929, as amended by Act 261 of the Public Acts of 1939.

The amendment broadened the powers of statutory appeal from the Michigan Public Service Commission to this court, because of a ruling by the United States Supreme Court that certain matters could not be thus appealed.

[fol. 105] So we are here for a review of what we consider an illegal order of the Michigan Public Service Com-



mission, and that order in effect was that we must cease and desist from making direct sales to industrial consumers.

The Court: Was it as broad as that, or did it merely refer to the Ford Motor Company?

Mr. Jennings: No, it was as broad as that. I think I can refer to that part of the order.

Mr. Williams: May I adopt your suggestion and have the order introduced?

The Court: Well, I merely ask the question. It will probably show in the order.

Mr. Jennings: Well, I think the court should have it before it, just what we are appealing from.

Mr. Williams: It is in the bill of complaint, the last two pages.

Mr. Jennings: We are appealing from this part of the order:

"It is Ordered That the Panhandle Eastern Pipe Line Company, a Delaware Corporation admitted to do business within the State of Michigan, cease and desist from making direct sales and deliveries of natural gas to industries within the State of Michigan, located within municipalities already being served by a public utility, until such time as it shall have first obtained a certificate of public convenience and necessity from this Commission to perform such services."

And, of course, we also appeal from the holding of the Commission that it had jurisdiction over the subject matter.

Now, first in order was the hearing of January 17, which was entirely argument, so I don't think there is any need [fol. 106] of reading that into the record. That is something the court can read, in considering the case.

The Court: I have read it.

Mr. Jennings: I do wish to read the stipulation of facts, and I don't know that that need to be taken down stenographically, but simply reading them. It is entitled in the cause, and I rather think we need to read the preliminary as to the facts themselves because it will show the position of the respective counsel at the time they stipulated these facts.

Mr. Dyer: Pardon me for interrupting. This is a very

lengthy stipulation, it is before the court, and I wonder if you couldn't consider it as read in the record.

Mr. Jennings: Well, no. I think I would like to read it because there comes a time when we object to certain portions of it.

Mr. Williams: Well, I am not trying to tell counsel how to try his case, but perhaps if counsel would submit his authority for the proposition that this court may strike from the Commission's record testimony admitted before the Commission—I am not talking about weighing that testimony in these proceedings as to whether or not it vitiates the Commission's order. I am talking about the proposition which I understand you support that this court has the power to go through the Commission's proceedings and strike out testimony, alter and amend the proceedings before the Commission.

Now, I say that this court has no such authority. You apparently have some authority on which you base your contention. Perhaps if you would present those now, it would save time.

Mr. Jennings: A case coming here from the Michigan Public Service Commission is heard *de novo*. The court knows that that is a lay commission, and all sorts [fol. 107] of testimony goes in that should not go in a record. It being an administrative tribunal, they do consider testimony which has no probative value in a court of law. We are here in a court of law, and the court has the right not to strike a part of the files here but to strike or not consider testimony received as was received in evidence when it would not have been received in a court.

If we appealed by certiorari to the Supreme Court we would be bound by the facts as found by the Commission; but if we take this sort of an appeal we are not bound by those facts, but this court finds its own facts from the record; and in the manner and to the extent in which we preserved our record before the Commission we have the right to have this court rule upon it.

I have not, of course, briefed that question because it has been so generally understood by the bar that that was the situation.

Mr. Williams: Well, I can't personally accept that last statement as to authority. I don't think it has been so generally understood by the bar. I never had a pro-

ceedings here where it was done. I would think that before we take the time of the court to go through a long record like that to no avail, that we should have some authority of the power to do it.

Mr. Jennings: Well, I think we should proceed with this stipulation. Now, the stipulation is not as long as this big bound volume.

Mr. Dyer: I might say, your Honor, insofar as checking through the matters contained in the stipulation of facts or any other part of the record, it would seem to me that that would be a matter of argument which counsel could present to your Honor. If there is any testimony or evidence in this record which counsel considers incompetent [fol. 108] or immaterial, that can be presented to the court in the argument.

This is not a case that is going before a jury. The court is sitting as a court in chancery. It would seem to me that I would want to have in this record all that had been before the Commission, rightly or wrongly, so that I could determine whether they might have perhaps regarded some improper testimony in reaching their decision.

These matters were all presented to the Commission. These objections were made. The Commission admitted the evidence, and admitted the exhibits. It seems to me that it is, therefore, part of the record before this court; and in reaching your conclusions you, of course, eliminate and disregard any evidence which has been improperly admitted by the Commission.

But I don't hardly see, and it is not my understanding, notwithstanding the statement of counsel, that in cases of this kind that it has been customary for courts to exclude this or strike it from the record; and I question the propriety of so doing.

Mr. Williams: Perhaps I misunderstand what counsel for plaintiff wishes to do, but my understanding of what he wishes to do is this: He is going to take the proceedings before the Commission, and where there was an objection to the admission of evidence before the Commission by counsel for the plaintiff, he is going to renew that objection here; and if the court is of the opinion that that was a valid objection and that the testimony should not have been admitted had the court been passing upon the question



in the first instance, then he is going to ask the court to strike that testimony out of this record.

Now, that is my understanding of what he proposes to do.

[fol. 109] Now, unless this court has the power to do that—and I repeat again that I am not questioning the power of this court upon the entire record before the Commission to weigh as to whether or not the Commission created error or made an error in admitting evidence of such a nature as to go directly to the order and vitiate the order; I don't question that at all, but what I question is the power of the court to alter the proceedings and the records before the Commission.

Now, if the court doesn't have that power, it seems to me that we are taking a lot of the court's time in going through all of that and ending up, after hours of work, nowhere; and that is why I feel that counsel—not to the proposition that this court may weigh the entire record as to whether or not there was error, but on the question as to whether or not this court can modify and change the record—should come here with authority before he takes up hours of this court's time.

I have some authority which I feel indicates to the contrary, and if it will be helpful I will be glad to give it now. I haven't been able to find a case anywhere that says that this court has the right to alter and strike from a transcript, for example, testimony given; and if it doesn't have the power, I repeat, I feel that counsel is imposing upon him by taking hours of the court's time to no avail.

Mr. Jennings: I don't think I will take as much time as has been lost in arguing the matter. I do desire to have a ruling of this court on the admissibility of certain testimony. It is the record we make here that goes to the Supreme Court, not a transmittal of this record, as in certiorari, as is made before the Commission; and one reason for desiring to have a ruling on the admissibility is that the Commission did not rule in any real sense of the word. They would say, "Well, we will take that under advisement," and that was the last you would hear of it, when we made the motion.

[fol. 110] Mr. Dyer: I object to that statement, Mr. Jennings. My recollection is that on every specific objection the Commission made a ruling to admit the testimony.

Mr. Jennings: Well, you will find throughout the statement of the Chairman, "We will take it under advisement."

The Court: Well, they admitted the evidence, though, did they?

Mr. Jennings: Yes, in that way.

The Court: Well, thinking quickly on it, I would assume that I had no power to strike out any of the testimony before the Commission. It does seem to me that we do have the power to consider whether any evidence there was or was not material.

Now, Mr. Jennings has raised a rather interesting legal question. I think if he can do this rather quickly, I will let him make his specific objections so that that matter is squarely raised upon the record; and I am wondering, Mr. Jennings, whether you can't refer to the particular testimony and the page without reading the entire record?

Mr. Jennings: Well, that is difficult. It comes in throughout.

The Court: Well, all right. I am going to let you proceed to make your record.

Mr. Dyer: Well, there are certain paragraphs, I think, in that stipulation, Mr. Jennings, that you prepared yourself, there are matters you wanted in the record, and I don't see why they should be read. Just take up the paragraphs. If there is something objectionable in it, read the paragraph and state your specific objection. It will save a lot of time.

Mr. Jennings: I think it will help the court to have these facts before it in an orderly manner. We have been arguing here and touching different points, but I [fol. 141] apprehend, from a short study of the files, that the court hasn't got exactly a clear picture of the entire situation.

Mr. Williams: I understood the court has ruled, and I am willing to abide by the court's ruling.

The Court: Well, I have told you what I think, Mr. Williams. I think, however, he wants to save the legal question as to certain specific matters, and if he does I am going to let him make his record.

Mr. Williams: That is what I understood you to say, your Honor. I didn't misunderstand.

The Court: All right. Go ahead in the way you want

it, Mr. Jennings, although I am telling you now that my opinion is that I have no right to change the Commission's record. If you can present any authority at a later date, why, I will change my mind.

Mr. Jennings: As a preliminary I want to read Paragraph I because of the reservation there:

(Mr. Jennings thereupon read Paragraphs I, II, III, IV, and V, of the Stipulation of Facts.)

Mr. Dyer: Just at that point, I would like to have it appear on the record, Mr. Jennings, that that paragraph was modified specifically in the record at the time the stipulation was offered and received in evidence.

Mr. Jennings: I don't think it was modified. It was made clear in a colloquy between counsel if at a later proceeding, or if there was a later proceeding either because we did not appeal from the order of the Commission or if we did appeal and were unsuccessful and the matter came back to the Commission for hearing on the merits, why, then this would be received just as it is.

Mr. Dyer: I can't exactly agree with your statement, but the record speaks for itself, and all I wanted to [fol. 112] show about it at this point was that this paragraph had been amended.

Mr. Williams: The Commission is not a party to that stipulation, is it, Mr. Jennings?

Mr. Jennings: The Commission is not a party to the stipulation.

Mr. Williams: And at the time the stipulation was offered, did I not object to its receipt just on the grounds in that paragraph there?

Mr. Jennings: Yes, at great length.

Mr. Williams: Well, that all appears in the transcript.

Mr. Jennings: Now, as to the facts:

(Mr. Jennings reading Paragraph VI, Subparagraphs 1 through 7 thereof, in the Stipulation of Facts, and Subparagraph 8 thereof as follows:

"8. Gas purchased from Panhandle by Michigan Consolidated Gas Company for resale in the Detroit area is sold by Panhandle under its rate schedule filed with the Federal Power Commission designated F. P. C. Rate Schedule No. 12, as supplemented by



five supplements thereto. Said rate schedule and the five supplements thereto, consist of (a) Contract dated August 31, 1935, between Panhandle and Detroit City Gas Company, (b) Supplemental Gas Contract dated June 2, 1946—")

Mr. Jennings (continuing): I don't think I will describe these different contracts because it just states what they are.

Mr. Dyer: Pardon me for interrupting here, Mr. Jennings. I assume you are not going to object to anything that you didn't object to on the hearing before the Commission?

Mr. Jennings: No.

[fol. 113] Mr. Dyer: Because the stipulation says unless then objected to it is waived. Now, I note that the first paragraph that you object to is paragraph 28 of the Stipulation of Facts, which is quite a long ways over yet.

Mr. Jennings: Well, some of these I may not read as I go along as I did with this one.

Mr. Riggs: There is an objection to paragraph 6 as to materiality, I notice.

Mr. Jennings: Suppose you follow that and tell me the objections.

Now, paragraph 6 relates to our sale of gas direct to two industrial consumers: One in Albion, the Albion Malleable Iron Company; and the other in South Lyon, the Michigan Seamless Tube Company.

I objected and asked a ruling on that, as to the materiality of any sales to industrial consumers in other parts of the state outside of the Detroit area, as having no bearing on the right to sell to Ford.

Does the court understand my objection?

The Court: Yes. Well, I am going to say this: That I doubt my authority to rule on the admissibility of evidence before the Commission. I do think I have the right to consider its materiality.

You make your objections on the record, I will overrule them, and that is saving the question then on the record for possible appeal.

Mr. Jennings: Then I understand that my objection to paragraph 6 is overruled?

The Court: That is right.

Mr. Jennings: On the record.

Mr. Dyer: Just a second here, Mr. Jennings. Let me get that straight. As to paragraph 6, before the Commission your objection was:

"Now, paragraph 6 is in question. In that paragraph I object to the materiality of any fact with [fol. 114] reference to the Albion Malleable Iron Company that is stipulated in the record."

That is the objection that you are renewing now?

Mr. Jennings: That is the one I am renewing now.

Mr. Dyer: All right.

Mr. Jennings: Going to paragraph 9:

(Mr. Jennings thereupon read subparagraphs 9, 10, 11, 12, 13, 14, 15, and 16 of Paragraph VI of the Stipulation of Facts.)

The Court: Now, Mr. Jennings, I certainly would get a better idea of this if I read this myself. Now, let's go on to the paragraph that you object to.

Mr. Jennings: Paragraph 28, which is first:

(a) is the proceedings before the Federal Power Commission; and

(b) is the contract with the Albion Gas Light Company; and

(c) is further in reference to the contract with the Albion Gas Light Company; and

(d) certain applications made before the Michigan Public Service Commission; and

(e) the initial date of delivery of Gas to the Albion Gas Light Company; and

(f) the contract with the Albion Malleable Iron Company; and then

(g) is further proceedings before the Federal Power Commission; and

(h) application before the Michigan Public Service Commission;

(i) further in reference to Albion Malleable Iron Company; and

[fol. 115] (j) the same thing with reference to the subject matter;

(k) is the proceedings before the Federal Power Commission; and

(l) applications made by Panhandle, Albion Gas Light Company and Albion Malleable Iron Company to the Federal Power Commission; and

(m) further in reference to Albion Gas Light; and

(n) the quantities delivered to Albion Gas Light Company for the purpose of carrying on the Albion Malleable Iron Company.

Now, we object to all those as not being material to any issue before the Commission and now before this court.

And we also, on the same ground, object to paragraph 29, which goes into proceedings and contracts with the Michigan Seamless Tube, as not being material to any issue now pending.

And 30 is in reference to a contract entered into with the Continental Oil Company for the purchase of natural gas. That contract, however, runs for three or four months, and expired long prior to the present proceedings. That we object to as immaterial.

And paragraph 31 we object to as immaterial because it relates to our contract and all our sales and deliveries to Consumers Power Company.

And we object to the materiality of 33 because that goes into proceedings before the Federal Power Commission involving the sale of gas to certain industrial consumers in the State of Indiana.

[fol. 116] . And we specifically object to any testimony contained in that part of the stipulation as not being material here.

34 is also immaterial because it refers to the direct sale of gas to an industrial consumer, Anchor Hocking Company, in the State of Indiana.

And 35 we object to as not being material because it refers to the sale of gas direct to industrial consumers in Indiana.

And 36, the same objection goes to the sale of gas in the State of Indiana.

38 we object to as immaterial because that refers to the sale of gas to the Kokomo Gas & Fuel Company in the State of Indiana.

40 we object to as immaterial because it refers to the sale of natural gas to the Kentucky Natural Gas Corporation, a Delaware corporation, which is for resale of gas in the State of Indiana.



And then we object to as immaterial in 41 the number and classification of gas consumers served by Panhandle Eastern in Michigan, these being indirect sales, that is, sold to public utilities for resale to their customers.

43 we object to as immaterial, the minutes of the meeting of the corporation held March 11, 1941, in which there is a statement by the chairman as to the future development of gas sales.

And that covers our objections to the Stipulation of Facts as entered into between the Intervenor and the Panhandle Eastern Pipe Line Company.

The Court: Well, the same ruling, Mr. Jennings. I would like to hear you as to the materiality of the Albion and the South Lyons situation.

[fol. 117] Mr. Jennings: Well, there are two phases there. Perhaps first I should point out that in the Commission's order it excepted those two sales from its order to cease and desist. In other words, there is no interference by the Commission with those two industrial consumers.

Now, it is our position that we have the right to sell and deliver in interstate commerce gas to any industrial consumer on an interruptible basis. By that we mean we only agree to sell them when our load is such that it does not interfere with our sale and delivery to those who have firm contracts with us; and in every case those who have firm contracts are public utilities serving the people both in their home, such as the Michigan Consolidated Gas Company serves the Detroit home owners, and commercial business and some industrial.

Now, inasmuch as we have the right to make such a direct sale to industrial consumers, it is entirely immaterial, as far as the Michigan Public Service Commission is concerned, that other contracts we have for direct sale, and we do have these two in the State of Michigan. I think there are something like twenty-seven over the entire line from the Panhandle district of Texas up through Michigan.

The Court: Well, isn't it true that you couldn't furnish the plant at South Lyon through any other public utility?

Mr. Jennings: That is true. The only source that the South Lyon company had was us. There was no public utility there.

At Albion there was a public utility and we entered into an arrangement with Albion that that company would carry

the gas for us from the town border into the plant, and we saw to it that they got the material to build that extension; [fol. 118] and that was an emergency matter, something which the Federal government asked us to do, and it was necessary in order for the Albion Malleable Iron Company to get out a certain product which was required in the European invasion. So that was a little unusual situation at the time, but still it didn't affect our right to serve that company directly.

Now, as to the Federal Power Commission, there is one thing I should clear up, I think; that is, I don't think Mr. Williams stated it as I understand it.

The Federal Power Commission enters this field, but its jurisdiction applies only to the transmission of gas. It does not cover the direct sale of gas to industry.

Now, the intent of Congress in that regard is very clearly shown by the hearings before it and the opinion of the Solicitor for the Commission, that competition would take care of sales to industrial consumers, and therefore the Federal Power Commission Act should not be broad enough to cover sales to industrial consumers; and there have been some recent decisions now in the advance sheets expressing that theory.

But if the Panhandle Eastern Pipe Line Company or any other pipe line company needs to construct a pipe line for the transmission of gas, it must get the permission of the Federal Power Commission. Now, also in constructing that pipe line in any given state, it must go to the state authority to have its pipe line approved, its specifications approved, under the police powers of the state, which go only to public safety. That is, the Michigan Public Service Commission could not deny us the right to construct a pipe line which met the proper specifications, because to do so would be a burden upon interstate commerce, and in fact would deny the right to transport in interstate commerce.

[fol. 119] So no matter where we sell gas directly to any industrial consumer, it has no bearing whatsoever upon the issue before the Michigan Public Service Commission and should not be considered by the court, and it should not have been considered by the Commission as being at all material.

Is there any other question the court wishes to ask on that point?

The Court: No. That is what I was interested in.

Mr. Jennings, assuming that the Commission had juris-

diction, does your suit consider the question as to the reasonableness then of the order of the Commission?

Mr. Jennings: No, no. Our attack is solely upon the right of the Michigan Public Service Commission first to take jurisdiction; and second, to burden interstate commerce to the extent of even denying, that is, requiring us to cease and desist.

The Court: All right.

Mr. Williams: Do you have anything further, Mr. Jennings?

Mr. Jennings: I have nothing further. Of course, I am assuming the court will read this second transcript, and as he reads it consider the objections that appear there.

The Court: Well, I have rather hurriedly read the bill of complaint, the order of the Commission, and the two transcripts in the separate bound volumes.

Mr. Jennings: I might state, with reference to the Indiana proceeding, there the Commission in Indiana ruled similarly to the Commission here in Michigan. That was appealed under the same sort of a statute we have here to the State Court, and we had information last week, and the opinion is now in the mail, the State Court overruled the [fol. 120] Indiana Commission and held, as we understand it from the telephone conversation, that the Indiana Commission had no jurisdiction.

We will try and get that opinion here.

Mr. Dyer: Before we get away from this question, on checking I thought I might as well make a similar objection on the record as those made by Mr. Jennings.

In the proceedings before the Commission we objected to the admission of paragraphs 17, 18, 20, and 21, I think it was, on the ground that it was not relevant and material to the issues in the case. I will renew that objection here at this time.

The Court: Those paragraphs again?

Mr. Dyer: 17, 18, 20, and 21.

Mr. Williams: My position would be the same as it was to Mr. Jennings' objection in that. I think I have stated my position sufficiently on the record.

I now have the complaint of the Michigan Consolidated Gas Company before the Commission that we were talking about on the record early this morning; the order to show cause issued by the Commission; special appearance for



the purpose of a motion to dismiss by Panhandle Eastern Pipe Line Company; motion to dismiss. Somebody apparently made free and made some pencil notations on this motion to dismiss. We claim nothing for them.

Notice of adjournment, that is, of the hearing from the 7th day of January at the Hurley-Wright Building in Washington to the 17th day of January, at two o'clock in the afternoon in the Blue Room of the Fort Shelby Hotel; the original order and opinion of the Commission.

Now, I have in the courtroom a certified copy of the order and opinion of the Commission, and in the past, [fol. 121] counsel not objecting, we have been given permission to retain the original order for the files of the Commission and to substitute the certified copy.

Mr. Jennings: No objection.

Mr. Williams: If there is no objection, I would like to follow that here.

Mr. Jennings: There is no objection to that procedure.

Mr. Williams: I understand I may do so.

The Court: All right.

Mr. Jennings: Inasmuch as in the record before the Commission it referred to the Federal Power Commission proceeding, I think it would be helpful if we would bring that up to date by filing now the Federal Power Commission order and opinion.

Mr. Williams: I have no objection, your Honor. You were the one that objected to it when I was explaining about it, but I am perfectly willing for it to come in.

Mr. Jennings: I am offering it as part of the file of the case rather than testimony.

The Court: Received. Now, do you wish these to be marked as exhibits, or may we consider that they are offered and received as indicated?

Mr. Jennings: Offered and received as part of the file.

The Court: As part of the file. All right.

Mr. Williams: Now probably is the proper time to return to the question of the papers stated in paragraph 4 of the Commission's answer. You are familiar with the papers that I detailed there, Mr. Jennings?

Mr. Jennings: Yes. I think we can take them up individually.

Mr. Williams. Now, my understanding was that you had no question as to the existence or the scope of these papers,

[fol. 122] but you did have objection as to whether or not they should be received in these proceedings.

Now, that is my understanding.

Mr. Jennings: That is right.

Mr. Williams: So I think that there is perhaps sufficient set forth in the answer to indicate the character of the papers. Perhaps at this time we can go through them, and then argue as to whether or not they should be received here; and if they are, I can cause them to be incorporated with the other papers.

Is that satisfactory to you?

Mr. Jennings: Yes, if you will take them up individually and then state your position.

Mr. Williams: All right.

Mr. Jennings: You offer one..

Mr. Williams: The first one I offer is a statement of the powers and purposes of the Interstate Pipe Line Company, which is the name by which the plaintiff was first incorporated.

Mr. Jennings: Pardon me. Did you refer to just where you have that?

Mr. Williams: Yes.

Mr. Jennings: Paragraph 4 and (a), (b), (c) or (d).

Mr. Williams: That is paragraph 4 of the answer, subparagraph (a) thereof, on page 3 of the answer.

Mr. Jennings: Thank you.

Mr. Williams: I will start over again so it will all be in one place.

Statement of the powers and purposes of the Interstate Pipe Line Company (by which name plaintiff was first incorporated) contained in the Certificate of Incorporation filed in the office of the Secretary of State of the State of Delaware on the 23rd day of December, 1929, a copy of which is in the possession of the plaintiff.

[fol. 123] Mr. Jennings: Now, I object to that as being entirely immaterial, and it will only serve to encumber an already too long record. The court well knows that in forming a corporation, under the powers and purposes every good lawyer puts in everything that he can possibly think that the corporation might in the future want to do. It is what the corporation does that is controlling and upon which the court must pass judgment, not upon what it is imagined it might possibly do under some extraordinarily broad powers and purposes.

Therefore I request that the court refuse to receive that which is offered in paragraph 4 (a) as being entirely immaterial to any issue in this case, there being no attack to the extent of asserting we were operating ultra vires.

Mr. Williams: I was in hopes counsel would cite to the court some authority for his position.

In the case of Nashville Water Company v. Dunlap, decided in 1940 by the Tennessee Supreme Court, reported in 176 Tennessee 79, 138 Southwestern 2nd 424, the contention was that the plaintiff was not a water company. If the plaintiff were a water company under the laws of Tennessee it would be a public utility, and the question was raised as to whether or not the provisions of the company's charter were material, and the court said:

"It is, of course, elementary that before private property can be held to be affected with a public use it must be dedicated by some act of the owner which may be evidenced by his declarations or acts, but in no more convincing and unequivocal manner can a dedication be made than by the acceptance of a charter which confers powers and prescribes duties which [fol. 124] could not be conferred or prescribed except in the interest of the public."

Now, I do not take the position that the charter statements are necessarily conclusive, but I do contend that they have evidentiary value to be weighed along with the other acts and facts in determining what the status of this company is.

For example, we have on this record the statement of its counsel that it has exercised in this state the power of eminent domain.

Also, when it comes into the State of Michigan, if it is a public utility, then by reason of the provisions of Act 144 of the Public Acts of 1909, it has to have its securities approved by the Commission.

When a corporation is first organized in this state, if it plans to be a utility engaged in certain activities, its securities have to be approved by the Public Service Commission. If it is an outside corporation coming in this state; it may not be admitted, under the authority of Pennsylvania Light & Power, I believe that is 169 Michigan 595, it may not be conferred with the powers to act as a



corporation in this state, not until its securities are approved.

Now, from their very nature, some of those answers have to be made on the basis of the stated corporate powers, because until the corporation gets into the state it may not lawfully do any local act in the state.

So I claim that the powers as stated in the charter have evidentiary value in these proceedings and should be received.

Mr. Jennings: I think at this point we might destroy the strong argument that has been built up.

While we insist that we are purely a private utility and not subject to the burdens of a public utility, it would make no difference as far as the issues in this case were concerned [fol. 125] if we were a public utility. A public utility operating solely in interstate commerce is not subject to the control of the Michigan Public Service Commission.

The gist of the action is whether or not the Michigan Public Service Commission is burdening interstate commerce, and thereby violating the commerce clause of the Federal constitution. And a public utility is just as free from that interference and regulation and burdening of its commerce as is a private utility.

And I think the very last case I had before on appeal from the Commission involved that question, and the final ruling was that even though it was a public utility that the Public Service Commission had no right to burden the commerce that it carried.

The Court: Wouldn't it be true, Mr. Williams, that a public utility might still have some interstate activities which would be outside the sphere of local authority?

Mr. Williams: That is right. That is right. But by reason of the phraseology of at least one of the statutes that we are here concerned with, we have the issue as to whether or not this company is a public utility.

Now, for example, Act 69 of the Public Acts of 1929 is one of the acts which lays down the requirement that before a public utility may enter the territory already being served by another utility and render service, it must obtain a certificate of public convenience and necessity.

Well, it would appear that before one could determine whether or not that act applied to a given corporation, it would be necessary to determine whether or not that corporation was a public utility.

The Court. Well, let's assume it is a public utility. We still have the question, of course, as to whether or not this particular operation is inter or intrastate commerce then.

[fol. 126] Mr. Williams: That is right. That is correct, your Honor. But perhaps at this point it would be well to point out that while the Commission squarely and unequivocally based its decision upon this business being intrastate commerce, it does not follow that if this business is interstate commerce that in certain of its phases it may not be regulated by the Commission; but I feel that it is necessary to our decision to determine whether or not this company is acting as a public utility.

The Court: Go ahead with the rest of that paragraph.

Mr. Williams: Subparagraph (b) of paragraph 4, appearing on page 3 of the answer:

"A Certificate of Amendment changing the name from 'Interstate Pipe Line Company' to 'Panhandle Eastern Pipe Line Company,' which certificate of Amendment was filed May 9, 1930, with the Secretary of State of the State of Delaware, a copy of which Certificate of Amendment is in the plaintiff's possession.

Mr. Jennings: Well, we will concede the change of name as therein set forth. We will object to placing in evidence the Certificate of Amendment as being immaterial and only serving to burden the record.

Mr. Williams: Subparagraph (c) of that paragraph contained at page 3 of the answer:

"The following statement contained in the petition filed with this Commission to secure authority to file Articles of Association with the Michigan Corporation and Securities Commission and to be admitted to do business in this state as a foreign corporation. This petition was filed June 16, 1941. The statement is as follows:

[fol. 127] '1. That it is a corporation existing under and by virtue of the laws of the State of Delaware and desiring to be admitted to do business in the State of Michigan under the provisions of Act No. 327 of the Public Acts of 1931 for the purpose of producing,

purchasing, transporting, and selling natural gas and constructing, operating, and maintaining pipe lines and other transmission facilities incidental to all of the foregoing and all such other powers and purposes set out in Petitioner's Certificate of Incorporation.' "

Mr. Jennings: Now, we object to that as immaterial. It has already been stipulated in the record that the Panhandle Eastern Pipe Line Company has been admitted to do business in the State of Michigan. The purposes are not material. It is that which the company does that is material.

Mr. Williams: Subparagraph (d) of paragraph 4:

"A certain letter dated April 7, 1942, from Shields, Ballard, Jennings and Taber to this Commission, which letter is as follows:

'Michigan Public Service Commission  
State Office Building  
Lansing, Michigan.

Attention: Secretary's Office.

Gentlemen:

In June, 1941 Panhandle Eastern Pipe Line Company made application for approval by the Commission of its application to be admitted to do business in the State of Michigan. At the time this application was made because it was then the thought of the [fol. 128] Commission that it would be necessary for this corporation to be domesticated before the Commission could enter an order permitting it to construct pipe lines in the State of Michigan. The application was made under protest; and it was later determined that domestication was not necessary.

In the future it may be that the Panhandle Eastern Pipe Line Company will wish to do business in the State of Michigan. Therefore, we withdraw our protest filed with the application for domestication, and request that the Commission proceed to the approval of the application. The statutory fee was deposited at the time the application was originally filed.' "



The letter is duly signed.

Mr. Dyer: That is already Exhibit 25 in the record.

Mr. Jennings: I object to that as being entirely immaterial.

The history of that may be a little important. When we made our first application to construct a pipe line in the State of Michigan, the Commission indicated that it would rule granting us the right if it met with the safety requirements and so forth, and said that before they could enter the order that we must domesticate in the State of Michigan.

Well, I protested that, but because of the urgency of the situation I filed an application under protest to be domesticated in Michigan, and then briefed the question, and later satisfied the Commission that they were wrong in their ruling that we had to be domesticated, and that a foreign corporation could construct a pipe line in the State of Michigan for the purpose of handling commodities in interstate commerce.

[fol. 129] Then later on, in constructing the pipe line, we had some trouble in Oakland County, where some of the property owners were unwilling to sell at all, and it was necessary then to start condemnation proceedings. Of course, before a foreign corporation can condemn property in any state it must be admitted to do business there, and so for that purpose we withdrew our protest upon our application to be domesticated, and were domesticated and carried out our condemnation proceedings to the point where they were settled before the hearing in court, then. So this past history has no bearing upon the present issue here, and is not worthy of any consideration by the court. It is immaterial.

Mr. Williams: Subparagraph (e) of the paragraph appearing on page 4 of the answer:

"Upon the order of this Commission dated June 11, 1942, the material parts of which are as follows:

8.

"That the approval of the securities of the petitioner by this Commission is sought solely for the purpose of fulfilling the statutory condition that such approval be had before the petitioner may exercise its corporate powers in this State and for the reason that petitioner

does now wish to obtain permission to do business in this State; accordingly

It is ordered:

1.

'That the Panhandle Eastern Pipe Line Company be, and it hereby, is authorized to file its Articles of Association with and to obtain permission to do business within the State of Michigan from the Corporation and Securities Commission.

2.

'That the Commission retains jurisdiction in this matter and the right to issue such other and further orders herein as may hereafter be deemed just, fitting and proper.'

"and upon the files and records of the proceedings before this Commission, including the stipulation of the parties before the Commission and the testimony taken."

Mr. Jennings: Well, I object to that as immaterial. If we are going to put into this record every proceeding that Panhandle Eastern Pipe Line Company had before the Michigan Public Service Commission, it is going to make a record that just cannot be handled.

The Court: I think it is admitted that they have to obtain approval of their securities, isn't it, Mr. Williams?

Mr. Williams: I think the latter language has been misunderstood by counsel. There is no intention of introducing any papers other than those described here in paragraph 4.

Mr. Jennings: It goes into something that has nothing to do with this situation here. There is a statute in Michigan.

Mr. Williams: Well, applying to what kind of companies, Mr. Jennings?

Mr. Jennings: Providing that companies under the jurisdiction of the Michigan Public Service Commission shall have their securities approved.

[fol. 131] I have always been very doubtful; in fact, it is my opinion that we are not required, except on the original admission, to have our securities approved, but it is much

easier to have them approved than it is to have some delay and fight out a battle with the Michigan Public Service Commission over the extent of their policies.

But be that as it may, any security issue we have had approved by this company has nothing whatever to do with the issue now pending.

Mr. Williams: I believe that is all of the new matter that is set forth in paragraph 4 of the answer.

The Court: Well, you do make the statement that it is the declared policy of Panhandle to take over and serve industrial consumers and so on.

Mr. Williams: Well, I will read it into the record.

"Further answering paragraph 4, the defendant Commission avers that the declared policy of the Panhandle Eastern Pipe Line Company is to take over and serve directly such industrial customers as it may obtain, and that this policy has been declared by the Panhandle Eastern Pipe Line Company on numerous occasions; also that there has been stationed at Detroit, in this State, for several years, an employee of the Panhandle Eastern whose duties have included the solicitation of new industrial business for the Panhandle, and that such employee in performance of his duties has been active in such solicitation.

"Further answering paragraph 4, it avers that the Panhandle Eastern Pipe Line Company plans and intends to add direct customers as soon as they are available."

[fol. 132] Mr. Jennings: I object to the receipt of Mr. Williams' recital from his reply to the bill of complaint as testimony. Of course, our reply to his answer sets up what we consider to be the true situation.

The Court: Well, it appears to me that subparagraphs (a) and (b) are admissible. I doubt the relevancy of (c), (d), and (e); and as to the last paragraph which begins "Further answering paragraph 4," I presume that we should be bound by the testimony that has been given in the record, whatever that may be.

Mr. Williams: That is right.

Mr. Jennings: As far as it is material.

Mr. Williams: My understanding is that the material in subparagraphs (a) and (b) may be supplied from the Commission's files and be included here.



Now, I am just wondering about the mechanics of it. Do we merely have the material parts copied? Would that be sufficient? In other words, I see no need of putting in the entire Articles of Incorporation. They number many pages.

The Court: Well, my thought was, Mr. Williams, that what you set up in the answer is sufficient.

Mr. Williams: That would be satisfactory to me.

The Court: That is all I intended.

Mr. Williams: All right.

(Thereupon legal arguments were made by Mr. Jennings for the Plaintiff, Mr. Williams for defendant Commission, Mr. Dyer for the intervening Defendant, and an argument in reply by Mr. Riggs for Plaintiff. Permission was granted by the court for the filing of briefs on behalf of the respective parties.)

[fol. 133]

COMPLAINT OF MICHIGAN  
CONSOLIDATED GAS COMPANY

(Filed with Michigan Public Service Commission,  
December 18, 1945)

The complaint of Michigan Consolidated Gas Company respectfully shows:

(1) Complainant, which for convenience will be hereinafter referred to as "Michigan Consolidated," is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic, commercial and industrial use within the State of Michigan. One of the territories so served by Michigan Consolidated comprises the cities of Detroit, Hamtramck, Highland Park, Dearborn, River Rouge, Grosse Pointe, Melvindale, Wyandotte and Lincoln Park, and twenty-two contiguous or adjacent villages and townships in Wayne County, said territory being commonly known and hereinafter referred to as the "Detroit District."

(2) The regulations and schedules of rates of Michigan Consolidated are on file with this Commission and Michi-

gan Consolidated has obtained all requisite authority and approval under the laws of the State of Michigan to carry on its business within the State, and particularly within the Detroit District.

(3) Panhandle Eastern Pipe Line Company, which for convenience will hereinafter be referred to as "Panhandle," is a corporation organized and existing under and by virtue of the laws of the State of Delaware and admitted to do business within the State of Michigan, and [fol. 134] is a natural gas utility engaged in the business of producing, purchasing, transporting and selling natural gas in the State of Michigan and elsewhere. The main natural gas transmission line of Panhandle extends in a northeasterly direction from sources of supply in the States of Texas and Kansas to a point in the City of Melvindale, Michigan.

(4) Michigan Consolidated obtains its entire supply of natural gas furnished to consumers within the Detroit District by purchase from Panhandle, taking delivery thereof at the terminus of Panhandle's natural gas transmission line in Melvindale, Michigan.

(5) Among the industrial consumers served by Michigan Consolidated within the Detroit District is the Ford Motor Company, which purchases gas from Michigan Consolidated for use in its River Rouge plant and elsewhere within the Detroit District. The furnishing of such gas to the Ford Motor Company is a substantial part of the business of Michigan Consolidated and contributes materially to its income.

(6) Michigan Consolidated alleges on information and belief that Panhandle has entered into negotiations with the Ford Motor Company with a view to supplying a large amount of natural gas to the Ford Motor Company for use and consumption in its River Rouge plant; that for the purpose of furnishing such supply an eighteen inch gas line, approximately 8000 feet in length, is about to be constructed to transmit such gas from the present transmission line of Panhandle to the point of consumption in the Ford plant; that such eighteen inch line will substantially duplicate and parallel the existing gas line through which Michigan Consolidated is now supplying the Ford plant.

[fol. 135] (7) Michigan Consolidated has facilities for fur-

nishing to the Ford Motor Company all of its requirements of natural gas and is entitled under its contract with Panhandle and the schedules of Panhandle on file with the Federal Power Commission to obtain gas in an amount sufficient to supply any requirements of the Ford Motor Company which Panhandle can supply, and is ready and willing to furnish such service.

(8) Michigan Consolidated is advised and believes, and alleges the fact to be, that Panhandle has not, in connection with the proposed furnishing and sale by it of natural gas to the Ford Motor Company, filed with and obtained approval by this Commission of its schedule of rates, nor obtained or made application for any certificate of convenience and necessity or other permit or authority from this Commission or from any other regulatory body having jurisdiction in the premises.

(9) Michigan Consolidated further alleges, upon information and belief, that the proposed sale of gas to the Ford Motor Company, above alleged, is part of a definite plan and purpose by Panhandle to make sales of gas directly to industrial consumers in all territory within this State which it is practical to reach by extension of its transmission lines, regardless of whether such consumers are now served by, or are within the territory now served by Michigan Consolidated or other utilities furnishing gas within the State; that Panhandle seeks to make direct sales of gas to industrial consumers in the territory now served by Michigan Consolidated in quantities agreeable to Panhandle, and refuses to furnish additional gas to Michigan Consolidated for resale for such purposes; that it is the intention of Panhandle to enter into contracts with as many large industrial consumers in this State as it can for the direct sale of natural gas; and that Panhandle [fol. 136] has publicly asserted and is proceeding on the basis that such business is beyond the regulation of this or any other regulatory body or agency.

(10) The proposed furnishing and sale of natural gas by Panhandle to the Ford Motor Company and to other industrial consumers within the State of Michigan, as above alleged, are, under the applicable statutes of the State of Michigan and the regulations of this Commission, sales and transactions subject to regulation by this Commission, and under such statutes and the rules of this Commission



Panhandle cannot lawfully furnish and sell gas to consumers within the State of Michigan without first obtaining from this Commission a certificate of convenience and necessity, and filing and obtaining approval of its rate schedules by this Commission.

Wherefore, Michigan Consolidated presents this complaint and prays that the Commission may institute an immediate investigation of the policies of Panhandle and its activities and conduct in relation to the furnishing and sale of natural gas to the Ford Motor Company and other industrial consumers in the State of Michigan, and particularly within the territory now served by Michigan Consolidated; that an order be issued to Panhandle forthwith to show cause why it should not make application for a certificate of convenience and necessity and file its proposed rate schedule and rules and regulations with this Commission and in all other respects comply with the laws of the State of Michigan and the rules of this Commission with reference to the furnishing and sale of natural gas as herein alleged; and that the Commission may take appropriate action to restrain and enjoin Panhandle from further proceeding with the extension of its facilities or [fol. 137] the furnishing or sale of natural gas to the Ford Motor Company or to any other consumer or consumers in the territory now served by Michigan Consolidated without the requisite authority and approval of this Commission:

(Duly signed and verified.)

ORDER TO SHOW CAUSE ISSUED BY MICHIGAN PUBLIC SERVICE  
COMMISSION

(Issued December 26, 1945)

By its complaint, filed with this Commission on the 18th day of December, 1945, the Michigan Consolidated Gas Company has represented unto this Commission as follows:

(1) That it is a corporation organized and existing under and by virtue of the laws of the State of Michigan; that it is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic, commercial and industrial use within the State of Michigan.

(2) That one of the territories served by it comprises the cities of Detroit, Hamtramck, Highland Park, Dearborn,

River Rouge, Grosse Pointe, Melvindale, Wyandotte and Lincoln Park and twenty-two contiguous or adjacent villages and townships in Wayne County, said territory being commonly known and hereinafter referred to as the "Detroit District."

(3) That the regulations and schedules of rates of the Michigan Consolidated are on file with this Commission; and, that the Michigan Consolidated has obtained all requisite authority and approval under the laws of the State [fol. 138] of Michigan to carry on its business within the state, and particularly within the Detroit District.

(4) That the Panhandle Eastern Pipe Line Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware and admitted to do business within the State of Michigan, and is a natural gas utility engaged in the business of producing, purchasing, transporting and selling natural gas in the State of Michigan and elsewhere; that the main natural gas transmission line of the Panhandle Eastern extends in a northeasterly direction from sources of supply in the States of Texas and Kansas to a point in the City of Melvindale, Michigan.

(5) That the Michigan Consolidated obtains its entire supply of natural gas furnished by it to its consumers within the Detroit District by purchase from the Panhandle Eastern, taking delivery thereof at the terminus of the Panhandle's natural gas transmission line in Melvindale, Michigan.

(6) That among the industrial consumers served by Michigan Consolidated within the Detroit District is the Ford Motor Company which purchases gas from Michigan Consolidated for use in its River Rouge plant and elsewhere within the Detroit District; that the furnishing of such gas to the Ford Motor Company is a substantial part of the business of the Michigan Consolidated and contributes materially to its income.

(7) The Michigan Consolidated Gas Company alleges upon information and belief that the Panhandle Eastern has negotiated with the Ford Motor Company a contract under which that company will purchase large quantities of gas from the Panhandle Eastern Pipe Line Company. [fol. 139] This Commission is informed and believes and therefore avers the facts to be, that the contract between

Panhandle Eastern Pipe Line Company and the Ford Motor Company was executed on the 20th day of October, 1945, and under its terms Panhandle is to supply natural gas to the Ford Motor Company for use as industrial fuel substantially as follows:

(a) Monday through Friday, both inclusive, excepting holidays—25,000 MCF (plus or minus 10%) per day.

(b) Saturday, Sunday and holidays—Not more than 15,000 MCF per day.

(c) Upon six months' prior written notice to Seller, Buyer shall have the right at any time during term hereof to purchase an additional volume of gas up to but not exceeding 25,000 MCF ~~per day~~.

(d) The agreement provides that deliveries of gas shall commence on or before May 1, 1946 and shall continue to and including November 30, 1948, and from year to year thereafter unless terminated by either party on 90 days' prior written notice to the other.

The Michigan Consolidated Gas Company alleges upon information and belief that for the purpose of furnishing such supply of natural gas an eighteen inch gas line, approximately 8,000 feet in length is about to be constructed to transmit such gas from the present transmission line of the Panhandle Eastern to the point of consumption in the Ford plant; and that such eighteen inch line will substantially duplicate and parallel the existing gas line through which Michigan Consolidated is now supplying the Ford plant.

[fol. 140] This Commission has caused a search to be made of its files and records and such search discloses that the Panhandle Eastern Pipe Line Company has not, in connection with the proposed furnishing and sale by it of natural gas to the Ford Motor Company, filed with or obtained approval by this Commission of its schedule of rates, nor obtained or made application for any certificate of public convenience and necessity, or other permit or authority, from this Commission.

That this Commission has been informed and believes and therefore alleges the fact to be that the Panhandle Eastern Pipe Line Company has adopted a policy of



making direct sales to ultimate industrial users and in keeping with such policy holds itself out as being willing and ready to supply natural gas to any industrial customers similarly situated as is the Ford Motor Company in the neighborhood of the Panhandle Eastern's transmission lines.

The Michigan Consolidated Gas Company alleges upon information and belief that the proposed sale of natural gas to the Ford Motor Company is part of a definite plan and purpose by the Panhandle Eastern to make sales of gas directly to industrial consumers in all territory within the State of Michigan which it is practical to reach by extension of its transmission lines, regardless of whether such customers are now served by, or are within the territory now served by Michigan Consolidated, or other utilities furnishing gas within this state.

It appearing unto this Commission that the rendering of service to an ultimate consumer of natural gas is a local business and as such is essentially intrastate in character; or, in the alternative, that the rendering of such service is a local business and, although essentially [fol. 141] interstate in character, is of local concern and not having been regulated by the Congress of the United States is subject to the powers and authority of this Commission.

Wherefore, It Is Ordered that:

The Panhandle Eastern Pipe Line Company, a Delaware corporation admitted to do business within the State of Michigan, appear and be before this Commission on the 7th day of January, 1946, at 10:00 a.m. (E. S. T.) in the Hurley-Wright Building, 1800 Pennsylvania Avenue, N.W., Washington, D. C., then and there to show cause, if any there be, why this Commission should not enter an Order against it to cease and desist from making direct sales of natural gas to the ultimate consumer within the State of Michigan, and more especially within the territory being presently served by a public utility distributing natural gas to the ultimate consumer, until such time as it shall have first obtained from this Commission a certificate of public convenience and necessity and shall have otherwise complied with the applicable statutes of the State of Michigan and with the relevant rules and regulations of this

Commission concerning the distributing of natural gas to ultimate consumers.

The place and time of the hearing as above indicated has been fixed to suit the convenience of the parties and if there be any objection the same shall be communicated to this Commission within two days after the service of this Order.

Michigan Public Service Commission.

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[fol. 142] NOTICE OF ADJOURNMENT OF HEARING

(Issued January 3, 1946)

Notice is hereby given that the Order to Show Cause issued in the above entitled proceedings by this Commission on the 21st day of December, 1945, and originally made returnable on the 7th day of January, 1946, at 10:00 a.m. (EST) in the Hurley-Wright Building, 1800 Pennsylvania Avenue, N.W., Washington, D. C., has been amended and will now be heard on the 17th day of January, 1946, at two o'clock in the afternoon of that day, in the Blue Room of the Fort Shelby Hotel at Detroit, Michigan.

Michigan Public Service Commission.

(Seal)

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[fol. 143] PROCEEDINGS BEFORE MICHIGAN PUBLIC SERVICE COMMISSION, JANUARY 17, 1946

Chairman McBrearty: D-3335, In the matter of the Panhandle Eastern Pipe Line Company and the Michigan Consolidated Gas Company, for an order to show cause.

This, gentlemen, as you know, is the matter of the complaint of the Michigan Consolidated Gas Company, concerning the direct sales of natural gas by Panhandle Eastern to the Ford Motor Company.

Now, would you gentlemen, for the record, state your appearances, please?

Mr. Dyer: For the Michigan Consolidated Gas Company, Angell, Turner, Dyer & Meek, Clifton G. Dyer appearing, attorneys; Park Chamberlain of counsel.

Mr. Jennings: For the Panhandle Eastern Pipe Line Company, Clayton F. Jennings, of Shields, Ballard, Jennings & Taber, and Mr. John S. L. Yost, of Chicago.

Chairman McBrearty: I presume, Mr. Dyer, the company that you represent, Michigan Consolidated Gas Company, is the complaining party, and in this hearing on the order to show cause, I would think that it would be proper for you, as their representative, to make a statement, and, if you have any proofs to offer this afternoon relative to the violation which you claim, you can make your statement accordingly.

Mr. Jennings: If the Commission please, we have—

Mr. Williams: Pardon me, Mr. Jennings, but I would like to enter my appearance, please.

Mr. Jennings: Yes.

[fol. 144] Mr. Williams: James W. Williams, appearing for the Commission.

Mr. Chairman, if I may make a suggestion, there has been filed here a motion to dismiss, and I assume that counsel would like to have this motion presented at this time.

Mr. Jennings: That is what I was about to request.

Chairman McBrearty: That is right. I am sorry. I forgot all about the motion to dismiss. That is perfectly correct.

Mr. Jennings, you filed your written motion, and would you want to enlarge on that motion?

Mr. Jennings: No.

Mr. Dyer: May we have a copy of the motion, please?

Mr. Jennings: Yes. This is the last copy I have, with the affidavit supporting it, so I would like to borrow it when you are through with it, so that we can make copies.

Is the Commission ready to proceed?

Chairman McBrearty: Yes, Mr. Jennings.

Mr. Jennings: If it please the Commission, we appear here specially and only for the purpose of a motion to dismiss, on the ground that the Commission does not have jurisdiction over the subject matter.

Now, I think the record should show this: The Ingham County Circuit Court has filed an opinion indicating that a decree could enter dismissing the bill of complaint filed there. Now, that decree has not been entered, so, as a matter of law, of course, the restraining order is still in force. But we waive, in so far as this motion is concerned, and any action that the Commission may take on the motion, the



restraining order that presently is standing out against any action of the Commission.

[fol. 145] Chairman McBrearty: Do I understand that it is your position, Mr. Jennings, that even though Judge Coash has ruled against you, and has granted the motion of counsel for the Commission to dismiss the bill of complaint, that the restraining order still stands?

Mr. Jennings: It still stands. The court speaks through its decree, and not through its opinion.

Mr. McBrearty: In other words, the fact that this opinion has not been reduced to a decree, means that the restraining order is still in effect: Is that your position?

Mr. Jennings: That is right, yes. I think that is the law, but I am waiving on the record the restraining order in so far as it might prevent the proceedings on this motion today.

Now, we have filed this motion to dismiss, as I have stated, and I think it is essential that the first thing that the Commission determine is whether or not it has jurisdiction over the subject matter, and that should be finally determined, if necessary, by the Supreme Court, before further proceedings are taken. Otherwise, we might go through a lot of trial and cross motions, which would be for naught, if the Supreme Court should hold that we are correct in our position.

Now, you have the petition, and I think it has been read by the Commission, so that I will go immediately into the argument, without reading the motion at this time.

Now, the first case that I wish to refer to is one by the Colorado Public Utilities Commission, and that is a case that has been widely quoted by the Courts. There was involved in that case the question as to whether or not a pipe line company had the right to sell gas to industrial consumers, and whether or not the Commission of Colorado could interfere with that sale, the commodity being [fol. 146] transported in interstate commerce, the same as it is here. The Colorado Commission pointed out that any administrative tribunal, while it might not be made up of lawyers, should follow the law as laid down by the court, and especially the constitutional provisions; and, after making that announcement of policy at the beginning of the opinion, it went directly into the issue as to whether the Colorado Commission had any power to interfere with

the sale of gas which had been transported in interstate Commerce to an industrial consumer, and they concluded in that case, it says that,

(Reading): "After careful consideration of the evidence we are of the opinion, and so find, that as to gas furnished directly by the respondent to industrial customers, which does not pass through a local distributing system, the respondent is engaged in interstate commerce, over which this Commission has no jurisdiction."

Now, it is a very interesting fact that just prior to this decision of the Colorado Commission, the Commission of Missouri had the same question presented to it, and reached the opposite result.

Mr. Dyer: Could we have the citation of the Colorado case, please?

Mr. Jennings: Yes, sure.

Chairman McBrearty: It is P. U. R. 1933 E, page 349, the case of Re Colorado Interstate Gas Co.

Mr. Jennings: To save citing cases, I will furnish counsel with a copy of my brief, and I will cite no cases that are not in the brief.

Chairman McBrearty: Very well. I think that will be helpful.

Mr. Jennings: I think I just stated that the Missouri Commission had reached the opposite result.

[fol. 147] Well, then, a bill of complaint was filed on the equity side of the court in Missouri to restrain the Commission from interfering with the sale of this gas to the industrial consumer. In the lower court, the order of the Commission was affirmed. Then an appeal was taken to the Supreme Court of Missouri, and the lower court was reversed. I will discuss that case a little later, but I wanted to bring in that sidelight right at this point.

Now, there are certain principles, fundamental principles, that we must establish before going into the precise question that is before the Commission under our motion.

Now, it has been established and recognized, I think, all over the nation, that natural gas is a commodity that may be transported in interstate commerce, and since the Panhandle Eastern Pipe Line Company, a Delaware corporation, but domesticated in Michigan, transports the gas

in issue from the states of Texas and Kansas, across several state lines, and across the Michigan-Ohio line into Michigan, it follows, up to that point at least, that we are distributing in interstate commerce. I do not think that counsel will contend that up to the point when we deliver gas to the Michigan Consolidated Gas Company, that we are still in interstate commerce.

Now, it is also well established that the power to regulate commerce between the states is exclusively in the Federal Congress; and, also, if Congress has failed to act, by its mere inaction the commerce clause takes effect, and no state has the right to enter into any proceedings regulating interstate commerce, except those proceedings which come strictly under the inherent police powers of the state. As far as our situation is concerned, that would only apply to public safety.

Now in all gas facilities that we have constructed in the state of Michigan, we have come before this Commission [fol. 148] and obtained its approval of the specifications which we used in the construction of the pipe line. Thereby the public safety of the citizens of Michigan has been protected, and within the sole jurisdiction of this Commission.

Now, it is also fundamental that the legislature, and the Commission acting under any statute by the legislature, has no power to interfere with the rights of a person to sell, or a person to buy a commodity which is transported in interstate commerce.

Now, these three principles which I have just set forth, are set forth very clearly in the case of *Corwin v. Indiana & Ohio Oil Company*, which I have cited in my brief, which was one of the earliest cases on the transporting of natural gas.

Now, the first United States Supreme Court case that I have cited in reference to the fact that the inaction of Congress does not permit a state to regulate, is that of *West v. Kansas Natural Gas Co.* There, the Commission of Kansas attempted to prevent—the Commission of Oklahoma attempted to prevent a pipe line company from using its highways in extending its facilities for the transportation of natural gas. There was at that time no Federal statute pertaining to natural gas in any particular way.



The United States Supreme Court said:

(Reading): "The inaction of Congress is a declaration of freedom from state interference with the transportation of articles of legitimate interstate commerce, and this has been the answer of the courts to contentions like those made in the case at bar."

There, of course, the Oklahoma Commission had contended that since Congress had not entered the field, [fol. 149] that they had a right to enter and regulate at least over their own highways.

The same rule was later enunciated in *Public Utilities Commission v. Landon*.

Now, in the matter before us, of course we propose to deliver gas under a contract duly executed by both parties, to the Ford Motor Company, and it was not a contract that we solicited; it was solicited from us, because of the claim of the Ford Motor Company that the local utility here was not able to furnish the quantities needed in post-war production. So, we have agreed to furnish a maximum of 15,000,000 cubic feet a day on an interruptible basis. That is, they have the second call after we have served the other Michigan customers.

Now, the case that sets up the power of the state is *Missouri ex rel. Barrett v. Kansas City Natural Gas Co.*, and there it is said that:

(Reading): "The line of division between cases where, in the absence of congressional action, the state is authorized to act, and those where state action is precluded by mere force of the commerce clause of the Constitution," (that is, in the absence of specific congressional legislation), "is not always clearly marked. In the absence of congressional legislation, a state may constitutionally impose taxes, enact inspection laws, quarantine laws, and, generally, laws of internal policy."

Now, we have from this Commission the proper authority, under that part of the jurisdiction which is reserved to the state of Michigan.

Now, some of the statutes which I apprehend that the State of Michigan, or, the Commission, may be relying upon, refer to the right of the state of Michigan to con-

trol local sales. If that statute meant the sort of a sale [fol. 150] that we have before us, it would be unconstitutional, in so far as it applied to interstate commerce. If this Commission construed that statute to apply to a sale such as we have here, then the Commission would be giving an unconstitutional construction of the statute. But the Supreme Court very clearly pointed out in the Barrett case, that a local sale is not the sort of a sale that we have here. There it said, in referring to such a sale, that

(Reading): "The sale and delivery here is an inseparable part of a transaction in interstate commerce—not local, but essentially national in character."

Then it points out that a local business is a business where any member of the public has the right on demand to have himself served, the same as any other member of the public.

Of course, you can see where this would lead us if an interpretation was made that this was a local sale which could be controlled by this Commission. You could compel us any place in the state where our transmission lines extend, to serve an industry that might not have any other opportunity to be served; or, if you thought it would serve the interests of the state better to have us serve them, you could compel us to do it.

Now, in a local sale, that would be true, but the Supreme Court has pointed out that sales such as this are not local sales; that it is only a sale by contract, contract of sale and purchase, and they are beyond the power of the Commission, of this Commission to regulate or interfere with, and Congress has specifically refused to take any action with reference to sales to industrial consumers. It has left it as a matter of competition, as the courts have said, between the different kinds of fuel that industry might use [fol. 151] and, of course, we known in furnaces you can use electricity or coal, or you can use gas and so on.

Now, one of the first cases I cited, specifically on industrial sales, was that of City Service Company v. The Missouri Public Service Commission. This is the case that I referred to earlier, where the Missouri Public Service Commission held that it had the right to regulate an industrial sale, and the state court affirmed it, but the supreme court of Missouri reversed the case, and after reversal, the

Service Commission applied to the United States Supreme Court for a writ of certiorari, and it was denied.

I think I will read this paragraph from that.

(Reading): "In the case at bar, the only reasonable inference to be drawn from the evidence is that the gas is delivered from the foreign state directly to the industrial consumers in this state in compliance with a contract that was in existence between such consumer and the pipe line. We think it is immaterial whether the pipe line owns all or part of the lateral pipe line that the gas passes through from the main pipe line to the industry, as it was a continuous movement. It therefore follows that under rules announced in the East Ohio Gas Co. case, and Missouri ex rel. Barrett v. Kansas Natural Gas Co., that the Pipe Line was engaged in interstate commerce when it was delivering gas to the twelve industries and that the Commission does not have jurisdiction of the Pipe Line on account of these sales, unless it is given jurisdiction on account of other questions hereinafter discussed."

[fol. 152] Then they concluded their opinion, as follows:

(Reading): "We think that the Pipe Line was engaged in interstate commerce and that it was not subject to the jurisdiction of the Commission. From what we have said, it follows that the judgment of the Circuit Court should be reversed."

Now, our position is even stronger than it was in the Missouri case. There *there* were twelve industries to be served under several contracts, and the matter of serving those twelve industries all were in issue in this case.

Here we propose to serve but one industry, and upon a contract solicited from us by the industry.

Now, we do serve two other industrial consumers in Michigan. One is at Albion where, due to the exigencies of war production, we entered into a contract, and named the local utility as an independent contract carrier to deliver the gas into the plant. The other is over at South Lyon, where there is no opportunity for that industry to get natural gas.

So you can perceive that the three industries, including the Ford Motor Company, are very widely separated, and



this is not part of a concerted plan to go into any particular area and pick out the industrial consumers. In each case it has been an exigency occurring that caused us to come into the situation.

Of course, that is merely background and scenery, as far as the issues here are concerned.

Now, there is also the proposition which has been announced by the courts, that when a commodity is transported in interstate commerce, and is not transported by the carrier for the general public, but it does make special contracts with an industry, that that is merely an incident to its principal business.

[fol. 153] Now, our principal business is, first, the transporting of natural gas from these foreign states, and, second, transporting it to a local utility, to local utilities, who then handle it in intrastate commerce. It is interstate until we get to that local utility.

Now, as an incident to that business, we are serving two industries, and propose to serve a third.

That situation was set forth in one of the Panhandle cases, *Panhandle v. Public Service Commission*, which is a Missouri case. That was decided by the Missouri State Court, and there it said,

(Reading): "The commodity—natural gas—acquired and transported as aforesaid in relator's pipeline moves in interstate commerce through this state, and said interstate movement continues until said gas enters the distribution system of the local distributing utility."

and then later,

(Reading): "So far as this record discloses, the work of relator to effect delivery as aforesaid is an incident to its interstate business as distinguished from the work upon the gas after delivery to effect its proper distribution for consumption by local consumers."

Then it also points out, or to industrial plants for industrial purposes.

Now, obviously, the contract we have here is a contract to purchase a commodity in interstate commerce.

In the case of *Sioux City, Iowa, v. Missouri Valley Pipe Line Company*, which is also a Federal case, decided, as I recall, by the Eighth Circuit Court of Appeals, there the pipe line company proposed to serve, I think, some nineteen different industries in Sioux City. Sioux City at [fol. 154] tempted to regulate that sale, and require a franchise, and things of that sort. The court pointed out that Sioux City was merely an agent of the State of Iowa, and that neither the state nor the city had the right to interfere with, or attempt to regulate in any manner sales by a pipe line company transporting natural gas in interstate commerce. It held that that was entirely a matter for the Federal Congress, and, of course, in the absence of specific legislation by the Federal Congress, the commerce clause of the Constitution came into force to prevent any state or agent of the state from interfering with the distribution.

In the very recent cases, which I think the Commission are familiar with, in the advance sheets of the United States Supreme Court, in the *Panhandle case v. Federal Power Commission*, I think Mr. Justice Douglas said in his opinion,

(Reading): "The direct sales are made to nineteen industrial consumers on an interruptible basis and on prices fixed in competition with other fuels."

There it was held that the Federal Power Commission had no right to regulate as to rates when the sale was to an industrial consumer.

Then the case pointed out, I think, quoting from some of the testimony and briefs filed before the Interstate Commerce Committee in Congress, that it was not the intent of Congress to regulate sales to industrial consumers, but rather that regulation would be controlled by competition between the fuels.

Now, there is only one other principle, and one other case that I wish to refer to, and that is the cause of some publicity that—whether it is given with authority or not, I do not know—that if the respondent here was permitted to make this industrial sale to an industrial consumer, it [fol. 155] would adversely affect the rates of gas to the citizens of the state of Michigan, particularly in the Detroit area.

It may seem strange, but the Supreme Court of the United States has specifically held that that is not a consideration to enter into a situation of that sort; that that would not give any state or any state authority the right to intervene to attempt to regulate, or anything of that kind.

Now, I refer to the Attleboro case. In this case a utility was selling electricity across the state line, from Rhode Island to Massachusetts. It made a very unfortunate contract, running over a twenty-year period, with an industrial consumer. The result was that it was losing money on this particular contract. The authorities in Rhode Island and Massachusetts thought that that adversely affected the rates to the public; and they attempted to abrogate the contract, or, at least, make them establish rates so that there would be no adverse effect on rates charged to others.

The United States Supreme Court said that that was not a consideration, it was relative to the situation, as far as the commerce clause of the Constitution was concerned. It said, finally, however, the paramount interest in the interstate business carried on as between the two companies is not local to either state and is essentially national in character.

Now, I have announced the principles that bring us here, and that we propose to follow, and I feel that the Commission in taking time to study the brief that we have filed, and considering these principles, must be bound to take the position that the Colorado Commission did, and as the Missouri Commission was forced to, after the Supreme Court had spoken on the question.

[fol. 156] So, under well founded constitutional law, upon which no doubt has ever been thrown, this Commission is without jurisdiction over the subject matter of these proceedings, that is, it has no jurisdiction over the contract entered into between the Ford Motor Company and the Panhandle Eastern Pipe Line Company. It has no jurisdiction over the rates we charge in that contract. It has no jurisdiction over the quantities that we deliver. We have protected the public in that regard, by only giving Ford an interruptible contract, so that no citizen of Detroit or this area will go cold this winter, or next winter, because of deliveries that we contract to make to Ford.

If the Michigan Consolidated Gas Company takes our entire supply of gas that we can transport into Michigan,



they will have it, and Ford will have stand-by equipment, I apprehend, to meet its situation in any such emergency.

So I respectfully ask this Commission to give due consideration to our argument, and careful study, and then enter an order holding that it does not have jurisdiction over this situation. Since we have not later than May 1 to start to perform our contract, we would appreciate an early order, whichever way it may be. If it should be against us, we are duty bound to go further with the matter.

I might say to the Commission I am suffering under handicaps, and the answering argument will be made by Mr. Yost. I have picked up a very bad cold.

Mr. Williams: May I have, for the purpose of this argument, a copy of this motion, and the brief?

(Documents were handed to Mr. Williams.)

Mr. Dyer: I would like to say, your Honor, that we were not served with the motion until a few minutes ago. We have had no opportunity to know what it contains, [fol. 157] and have made no examination of the brief, or the authorities relied upon by the moving party, except as we have listened to the argument here today.

Mr. Chamberlain, of counsel for the company, was to handle any legal questions that arose, and I think he would like a few minutes to see what this is all about.

Chairman McBrearty: I think that that is proper. I think the reason that the motion to dismiss was not served until just now is unquestionably because counsel for the Panhandle Eastern probably relied upon getting some aid from the Ingham County Court, and that matter was only argued on Tuesday.

Mr. Jennings: We worked until midnight last night getting this in shape to present it to the Commission.

Chairman McBrearty: On Tuesday, as I recall, the Ingham County Court granted the motion of counsel for the Commission to dismiss the bill of complaint, which grounded the restraining order which sought to prevent us from hearing this order to show cause. Is that correct?

Mr. Jennings: That is right, your Honor. The court filed an opinion on that day.

Chairman McBrearty: That is right. So I can appreciate, and I think counsel can, the fact that counsel for Pan-

handle has not had too much opportunity to prepare this motion to dismiss, and that is the explanation I would think of the reason for serving you so late. That is understandable.

Any time you want now, Mr. Dyer, and Mr. Chamberlain, to look over the authorities which have been cited, any reasonable time will be given you.

Suppose we take a ten-minute recess at this point.

(Thereupon a short recess was taken.)

[fol. 158] Chairman McBrearty: Are you ready, gentlemen? Mr. Williams?

Mr. Williams: Mr. Chairman and members of the Commission: In answer to the motion to dismiss filed on behalf of the Panhandle Eastern Company, at this time I request that the Commission take such motion under advisement, and, in the meantime, that it proceed to the development of a record which will reveal the facts. At the present time, this record is no condition for a determination of facts. Counsel for the Panhandle Eastern has relied upon certain facts in his argument, but statements of counsel do not establish facts, and there is no pleading or any other suitable paper in these proceedings as of this time claiming an issue on the facts.

The facts are neither stated, nor are they admitted, nor are they denied.

With that state of the record, I find it rather difficult to believe that a motion to dismiss is well founded.

Assuming now, for the purpose of my argument, the existence of certain facts, I believe there is probable cause for belief that the Panhandle Eastern Pipe Line Company is engaged now, or plans to engage in the foreseeable future, in the performing of a local business.

As I conceive these proceedings, they involve two main issues. The first one relates to the policy, the motive, the intent, the plan of the Panhandle Eastern Pipe Line Company; and the second relates to acts or things done in pursuance of that plan.

I feel that this record should be developed to disclose what the policy of the Panhandle Eastern Pipe Line Company is, if there be a policy, concerning direct sales to industries; and I feel that it should be developed to show what has been done in pursuance of such policy, if one has been formulated.

[fol. 159] It has been assumed here that it could be demonstrated that the transaction which has been most frequently mentioned, and that is the transaction with the Ford Motor Company, if it could be conceded that the transaction is in interstate commerce, it seems to be assumed that that means that this Commission would then be without any authority whatsoever in the premises, and I do not believe that that assumption is sound.

At this point, it might be well to point out that these proceedings are not limited to the incident of a contract with the Ford Motor Company. The scope is much broader than that. What has been done, or what has not been done with the Ford Motor Company, may present a picture of what the company is doing under a policy, but the scope of these proceedings is not limited to the Ford Motor Company.

In the motion, it has been stated that under the commerce clause, and by that clause they mean the clause in the Federal Constitution relating to interstate commerce, that state bodies, and state governments are absolutely precluded by the mere fact that the subject matter is interstate commerce; but such a result does not proceed *ipso facto* because from the early days it has been recognized that interstate commerce may be regulated, so long as the problem dealt with is local in nature, and as long as the manner of dealing with that problem local in nature does not unreasonably burden interstate commerce.

An application of that doctrine, and there is no need to review all of the cases, they are numerous, but an application of that doctrine is revealed in the Pennsylvania Company v. Commission case, reported in 252 U. S. at page 26. There both the transmitting company and the distributing company were the same. Now, that is purposely ungrammatical English, for the purpose of emphasis. That is, one company was bringing the gas into the state, and that same company was making the local distribution. There was no intermediary, or no middle man, and the State Commission undertook to regulate the rights of the company. The case found its way finally before the United States Supreme Court, and I believe Justice Brandeis wrote the opinion, but that is not material.

The court held that the business of distributing to the local consumers was interstate commerce, because there



had been no break in the transmission. But the court went on to point out that the problem of distribution was a problem local in nature; that Congress had not yet entered the field, and that while it was interstate commerce, it was still subject to state regulation, so far as rates were concerned.

We talked about that case on Tuesday, and at that time counsel for the Panhandle Eastern Pipe Line Company pointed out that that case had been overruled. He said that it had been overruled by the East Ohio Gas Company v. Tax Commission case, reported in 265 U. S. at 298, 68 Law Edition, 1027.

I am inclined to agree with counsel for Panhandle that that case has been overruled, but if it has been overruled, it has been overruled in holding that the distributing or distribution of gas to the ultimate consumer, even where there was no break, even though there was no break, was interstate commerce, because the East Ohio Gas case in a similar situation held it to be intrastate commerce. So if it be that the Pennsylvania case has been overruled, it is only to the extent that it held that such a transaction was in interstate commerce.

When one considers the case of Public Utility Commission v. Landon, 246 U. S., 236, the reason is discovered for believing that the Pennsylvania case has been over- [fol. 161] ruled, when it held that such a transaction was in interstate commerce.

In the Landon case, United States Supreme Court uses this language:

(Reading): "The business of supplying on demand local consumers is a local business, even though the gas be brought from another state and brought for distribution direct from interstate mains, and this is so whether the local distribution be made by the transporting company, or by an independent distributing company."

This Commission is an agency of the State of Michigan, created and existing by reason of Act 3 of the Public Acts of 1939. Section 4 of that Act transfers and confers upon this Commission all of the powers and authority of its predecessor Commission, the Public Utilities Commission, and the Railroad Commission.

By Act 69 of the Public Acts of 1929, and in Section 2 of that Act, it is provided, in substance, that where there is a utility serving a district, no other utility may begin servicing that district until it shall first have obtained a certificate of public convenience and necessity from the Public Utilities Commission to do so.

Then there is Act 9 of the Public Acts of 1929, relating to the distribution of natural gas.

Under Act 3, and Section 4 thereof, the powers conferred by Act 69 of the Public Acts of 1929, and Act 9 of 1929, are now in this Commission.

By Section 6 of Act 3 of 1939, this Commission is given power over the formulation, and so forth, of pipe line companies.

Now, in the past, some question has been raised as to whether or not by Section 6 of Act 3 further and additional powers have been conferred upon this Commission. If it [fol. 162] be conceded, just merely for the purpose of argument, that Section 6 of Act 3 of the Public Acts of 1939 does not add one iota to the powers which this Commission would have possessed under Section 4 of that act, at least that section may be considered as a declaration of the legislative purpose and intent as to how statutes relating to the same subject matter should be construed; and if it be considered in that light, in view of the other relevant and pertinent statutes, under a proper set of facts, it is our position that this Commission has jurisdiction, and, for that reason, I ask the Commission to take this motion under advisement, and to proceed to a development of this record, for the purpose of learning whether or not facts do exist whereby this Commission may be invested with jurisdiction, and whether or not this Commission should not at this time exercise its jurisdiction.

Chairman McBrearty: Do you desire to be heard, Mr. Jennings?

Mr. Jennings: Mr. Yost has asked me to answer the question raised as to procedure.

We have strictly followed the practice in Michigan, in preparing a motion, supported by an affidavit, appearing specially to present that motion, and only to that extent do we appear, and only to that extent do we waive the restraining order. We are, of course, willing to have this Commission determine the question of its own jurisdiction, and I

think that that is the first thing that should be done, before we go into long hearings on questions of fact.

This motion is based purely upon a question of law. The facts are immaterial. We raise only questions of law. We have set forth what facts are necessary, by affidavit, and, of course, counter-affidavits could be filed, if counsel for the state wish to do so.

[fol.163] But we should get rid of this jurisdictional hurdle before we go any further. If we, in your opinion, are wrong, why, then we want to take the proper appeal on that sole question, and we would prefer to go up on the ruling of this Commission, rather than to appeal the Ingham County Circuit Court case at this time, and get a restraining order from the Supreme Court, pending the determination of that appeal.

I might say further that we are not prepared to go into the question of fact today either, and you can appreciate our position in that regard, because we were in the Ingham County court case, and we are just not ready on the facts, even if we did waive that.

Mr. Williams: Mr. Chairman, in my argument, I ignored the claimed fact that there is an injunction outstanding which would restrain these proceedings. I did so, because I understood counsel to waive the existence of any such injunction. Now, it appears that he waived it "only so far."

When the injunction was served, I was of the opinion that the court had no jurisdiction to have issued it in the first place. At that time, if I had relied solely on legal principles, I could have advised this Commission to have proceeded in the face of that injunction. Respect for the court prevented any such course of action on my part. But we have now shown our respect for the court, we have gone before the court, and received its concurrence in our position, that it had no jurisdiction to have issued the injunction in the first place. So at this time I feel free to advise the Commission that it need not fear incurring any penalty by going forward with these proceedings, because I feel it is safe to assume that when the Ingham County Circuit Court gave its opinion that it had no jurisdiction, that that court would be just a little slow to find this Commission in [fol.164] contempt of any restraining order that it issued when it had no jurisdiction in the proceedings in the first instance.



Perhaps I should at this time just state one additional remark, in regard to the claim that so far the Panhandle Eastern Pipe Line Company has only served two companies in Michigan. I never knew that the claim that you had committed just a little wrong was a defense.

Chairman McBrearty: Gentlemen, it is the decision of the Commission, that the motion advanced by counsel for Panhandle to dismiss will be taken under advisement, and the motion will be decided when we have heard the facts upon which the complaint is based in this case. Otherwise, this Commission would be determining a question without having any facts before it on which it would be basing its determination, and I do not think that that would put us in a very enviable position when this case is reviewed by a higher court, as it is bound to be.

Consequently, if counsel for the Michigan Consolidated Gas Company, which is the complaining party, have any facts that they wish to put before this Commission, we will be very glad to hear them.

Mr. Dyer, do you have any testimony that you wish to offer in support of your complaint?

Mr. Dyer: I might say this on that point, that we have some witnesses here, with whom we can proceed this afternoon, Your Honor, somewhat preliminary, perhaps, and not by any means covering the full scope of inquiry which would be necessary before this Commission could reach a decision.

Counsel for the moving party has suggested, I think agreed that upon this motion, we have the right under proper procedure to file counter-affidavits. Those counter-affidavits would present the issue of fact which the Commission [fol. 165] should investigate under this motion. I simply offer this as a suggestion for the Commission's consideration, as to whether they prefer to proceed with this preliminary motion, or give us an opportunity to file the counter-affidavits setting forth the factual issues which they will hear when the testimony is presented.

Chairman McBrearty: Mr. Jennings, you have heard the statement of Mr. Dyer. You have your choice. You told us that you were not prepared to proceed on the facts. I presume you mean by that that you are not prepared to produce facts yourself.

Mr. Jennings: We do not have witnesses here that we would need.

Chairman McBrearty: No. Is it your position that you are not now presently able to meet—to cross-examine persons that are put on the stand in support of the position of the complaining party, the Michigan Consolidated Gas Company?

Mr. Jennings: I do not think that I would be in that position. Mr. Dyer has adopted my suggestion that they could file counter-affidavits, if the Commission wishes to take the case in that way. If affidavits were served upon us, and give us a chance to produce more affidavits, why, I think that would make a record that would satisfy the Commission, before the Supreme Court. I would be satisfied with the record as it now stands before the Supreme Court.

Mr. Williams: Is it my understanding of what counsel for Panhandle has just said, that they propose to make a record here by use of affidavits? I doubt the desirability of such a mode of proceeding. It would preclude the cross-examination of witnesses, and I do not believe it would be very satisfactory.

[fol. 166] Chairman McBrearty: If the facts were stipulated, would that still be unsatisfactory in your opinion?

Mr. Williams: If the facts were stipulated?

Chairman McBrearty: Yes.

Mr. Williams: That would be a different situation, Mr. Chairman. What they proposed to do, as I understand it, was to file affidavits, and then file counter-affidavits, which will not establish facts.

Chairman McBrearty: A stipulation would establish facts.

Mr. Williams: Yes, a stipulation would establish facts.

Now, if it so happens that the parties to these proceedings can stipulate facts, why, most everyone would be agreeable to that, because that would shorten the proceedings, and that would show what the facts are. I do not want to be understood as opposing that, no. But that was not the proposal. The proposal was to file affidavits and counter-affidavits, which certainly would not establish facts. It would just merely add to the controversy.

Mr. Dyer: It is not my suggestion, your Honor, to try this issue on affidavits and counter-affidavits. My suggestion was, or, my position is that under the rules of procedure we have the right to file counter-affidavits. There will be issues of fact raised by the affidavits already filed,

and the counter-affidavits to be filed. Then the Commission can proceed. There no doubt will be a dispute as to the facts which are necessary to a determination of this case. The Commission cannot decide it until they have taken evidence on those facts, and thoroughly investigated them in these proceedings. It was not my idea that we should file some counter-affidavits, and Panhandle Eastern file some more affidavits; and then the Commission decide it [fol. 167] on the basis of those affidavits. I think that would be ridiculous, because it would be a case of one party alleging a fact to be so, and another party denying that it was so. How could the Commission decide it on that state of facts? The Commission would then have to proceed to determine what the facts were.

Mr. Yost: May I say a word at this point?

Chairman McBrearty: Yes, Mr. Yost.

Mr. Yost: As all of us know, these proceedings, involving the taking of testimony and evidence, require a great deal of time on the part of the Commission, as well as on the part of the lawyers and parties, and I wonder if we could not save a lot of time if we made an effort with Mr. Dyer to reach a stipulation. Certainly, perhaps, a great many matters could be covered, and if there were matters on which we could not stipulate, those matters could either be covered by written statements of evidence, objections, or something of that character, or perhaps they would be matters as to which testimony would be taken, and in that way perhaps the matter could be shortened.

Mr. Dyer: I am sure, Mr. Chairman, that we would be glad to make any effort to stipulate as to all of the facts that could be agreed upon. It would save our time, and the time of the Commission.

Mr. Yost: In that connection, I might say, since Mr. Dyer represents the complaining party, it would be very helpful if he would initiate the process by submitting to us what he regards as facts on which he can sustain the position of his client; and I dare say that we could in the course of time work out something satisfactory, and time saving.

Chairman McBrearty: How long would you gentlemen estimate it would be before you could agree on a state of facts that could be submitted to this Commission for [fol. 168] their determination? Meanwhile, the Ford Motor Company stands by, and is not being aided in one



way or another by this hold up of the decision in the case, because, even when we finish this case, whatever our decision is, it is sure to be reviewed. If we hold against the Michigan Consolidated Gas Company, I do not doubt but they will review us. If we hold the opposite way, you will review us, Mr. Yost. Meanwhile the Ford Motor Company sits by, though of course the contract doesn't begin for some time, but I do not know how long the determination of this thing will take, unless you gentlemen can more or less agree now on how long it will take you to stipulate on the facts. Two weeks?

Mr. Yost: Mr. Chairman, I would say that on the basis of the facts that are set forth in the order to show cause—I might say here that I personally have never seen the complaint that was filed by the Michigan Consolidated Gas Company with the Commission. But the Commission in its order to show cause, recites the portions of the complaint which presumably are the essential and pertinent facts; and those facts are not extensive; to some extent they could be conceded right at this point. So that I would think that it would be very little trouble for you to have sufficient facts on which to rule with respect to this motion raising this jurisdictional question.

I do think that my brother, the Assistant Attorney General, Mr. Williams, is taking this Commission far afield when he suggests that you must go into the questions of policy of Panhandle, and what it plans. The Supreme Court has definitely said, as Mr. Williams knows, in this Attleboro case, that was decided, and I quote from the opinion,

[fol. 169] (Reading): "The test of the validity of a state regulation is not the character of the general business of the Company, but whether the particular business which is regulated is essentially local or national in character."

Now, all you have to decide here, as I see it, is the question of whether or not you are to take jurisdiction over this Ford sale. I do not think that this Commission is inclined, or should go into the whole question of policy as to the future, what our executives are thinking, what they are planning to do. That is not really an issue to be

tried before an administrative agency, or before a court. Courts will not hear cases of that kind.

The question is, do you have authority to forbid us to sell this gas to Ford, and, likewise, as I noticed in a newspaper this morning, the report about it; and do you have authority to forbid the Ford Company from buying this gas directly from us. I was amused when I saw the reporter's idea of what this hearing was on. The newspaper account said that the Commission was going to hold a hearing today on the petition of the Ford Company to buy gas from Panhandle.

Now, of course that is not what the hearing is on procedurally, but it is exactly what the question before you is.

Now, I think that the facts that you need to decide this case are very simple, and we do not need a great deal of testimony. You know that we have this contract, it is in your hands, it is filed as an exhibit to the motion. You know that the gas is brought to that point in interstate commerce, it crosses over the state line, and you know at that point it is going to be sold.

Now, there are all of the facts that you need.

The Michigan Consolidated Gas Company takes the position that they ought to have that, and that we ought [fol. 170] not to have the business, and, therefore, you should forbid that sale.

Now, the question is, can you forbid a sale in interstate commerce? No court has ever held that you can do that, that a state can do it. To be sure, as the East Ohio case holds, states can place non-discriminatory taxes on interstate transactions, but no court has ever held, and no court ever will hold that, as long as the commerce clause stands, a state can say that you cannot make that sale in this state.

So that I think that the facts that you need upon which to decide this question are very few, and very simple. I do not see where we can go beyond that. Certainly, if you want to go into the question of what our general policy is, and what we are going to do in the future, what we are planning to do, to use exactly the words of the Assistant Attorney General, I think you are going far afield, and I do not think that this Commission would want to take the time to do that.

Now, I am very anxious to speed this cause along, and I am sure that the Ford Motor Company wants this thing

pushed along, but I do not think that the cause is going to be speeded if we are going to go into all of these questions as to what our policy is, and all that sort of thing.

Chairman McBrearty: Mr. Yost, so far as the question of policy is concerned, there is no testimony before the Commission on the policy, and if the testimony is proffered, and you object to the testimony, that can be taken care of when it is offered.

What I tried to obtain, and apparently have not succeeded in obtaining, is an agreement between you people as to how you want to proceed. Now, if you want to stipulate as to the facts, if counsel want that, that is agreeable to the Commission. If you want to proceed [fol. 171] on the facts that the complaining party wants to put before us this afternoon, we are here to hear those.

Now, ultimately, we will have to decide the facts, and what those facts are is up to you people to make up your minds what they are going to be. Now, if you want to give it to us in writing by stipulation, fine.

I don't myself very much, knowing something of the background, that there can be much agreement between you, because I think you are poles apart in your viewing of this question.

You people figure, and have all along figured, that you have the right to sell direct to industry. That has always been your position. They are on the opposite side of the fence. They do not think you have that right.

Now, it is up to this Commission, first of all, to determine what our jurisdiction is, if you do attempt to sell to industry.

Mr. Yost: Mr. Chairman, it is now 4 o'clock, and I am willing to go right to Mr. Dyer's office with him, and start right on the stipulation right away, if that is agreeable to him, and if it will help speed the cause along.

Chairman McBrearty: My other question has not been answered yet.

How long do you think it would be before you gentlemen could agree on this simple stipulation of facts? And, if the facts are so simple, Mr. Yost, it just occurs to me, why didn't you stipulate before the Federal Power Commission, when you were there last week?

Mr. Yost: Well, now Mr. Chairman, you raise a question that is really very interesting.



Now that you mention the Federal Power Commission, the Panhandle is in this position, as you know, because you were there: The Federal Power Commission asserts that it has authority to forbid or permit this sale. Now, [fol. 172] there is a Federal agency operating under the Natural Gas Act.

We concluded that proceeding last Saturday. We were a week before the Federal Power Commission. Now we are in before this Commission on the question of whether or not it has authority to forbid this sale, and you see the position that we are in.

I think that that hearing did go far beyond the scope of the issue, as far as the testimony that was introduced there is concerned. But, of course, you have an entirely different situation with respect to the Federal Power Commission, from the situation which you have here with respect to your jurisdiction.

There you have a Federal agency functioning under a Federal statute, which fastens Federal regulation upon interstate natural gas pipe line companies.

It is our view that when Congress examined the whole field, and pre-empted the whole field, that it decided that certain transactions should be subject to regulation, and certain transactions should be free from regulation, and that the legislative history of the Natural Gas Act shows that these direct sales to industrial customers from the pipe lines were intended by Congress to be free from regulation by the state, or by the Federal government.

Now, it is true that under the Natural Gas Act we cannot construct transportation facilities for transporting gas without the authority of the Federal Power Commission. I have taken the position consistently that we cannot serve industrial customers without applying to the Federal Power Commission, unless we have the facilities there with which to transport the gas to the point of delivery.

Now, counsel for the Federal Power Commission took the position in the argument on Saturday, and I am sorry, [fol. 173] Mr. Chairman, that you were unable to remain over for the argument, and that Commissioner Marshall was unable to remain there—counsel for the Federal Power Commission took the definite position that the Federal Power Commission has complete authority over this

entire transaction, with the exception of the rate that the Ford Motor Company must pay us.

Now, we do not agree with that. We do not agree with that. But, you can see the position that we are in, where two agencies, one the State, and the other Federal, are both claiming the right to tell us that we can or cannot make this sale to the Ford Motor Company.

I think that it must be pretty clear that if the Federal Power Commission has that authority, that you do not have it. I do not think anyone here would disagree with that proposition.

The proposition that Mr. Williams, as I understand it, is advancing, is that assuming that the Federal Power Commission does not have the authority to forbid that sale, that you do have the authority to forbid it. On that proposition, of course, I take issue with him, because I say that there is no case that supports the proposition that a state agency can forbid a sale in interstate commerce.

Now, perhaps this thought is running through your mind, that this is not a question of forbidding it, but it is a question of our having to come to you and asking you for permission to do it.

Well, that brings us around to the question of whether you can forbid it, because, if you cannot forbid it, then it is a mere formality and a waste of time to go in, if you cannot permit it, to ask your authority to make the sale.

I do not want to try the patience of the Commission, to get back to the point that the Chairman has approached [fol. 174] or is approaching. Now, I would like to speed the cause along. I think you have enough facts on the affidavit, and on the facts in the complaint, that are not contradicted by the affidavit, to make a record on which this jurisdictional question can be decided. We do not have the complaint, but I mean the facts in the complaint that were cited in the order.

Chairman McBrearty: I have before me here the complaint, with proof of service upon these agencies, and these persons: Proof of service on the Federal Power Commission; proof of service on the Corporation Counsel of the City of Detroit; proof of service upon the Michigan Consolidated Gas Company, the Ford Motor Company, Panhandle Eastern Pipe Line.

Mr. Williams: Mr. Chairman, that is part of the order to show cause, is it not?

Chairman McBrearty: The order to show cause, and the complaint. There is a proof of service of the complaint, too, I think.

Mr. Williams: No. The complaint was not served.

Chairman McBrearty: Wasn't it?

Mr. Williams: The order to show cause.

Chairman McBrearty: Proof of service is attached to the complaint, of Paul Hapke, who is connected with our Commission. It says, "The attached paper," and the complaint is the attached paper. But you say that the complaint was not served, but merely the order to show cause.

Mr. Williams: Service was made of the order to show cause. The order to show cause recites the main facts of the complaint.

Mr. Jennings: I think we, of course, should have the complaint before we start to stipulate the facts.

Chairman McBrearty: What is your suggestion, Mr. Dyer?

[fol. 175] Mr. Dyer: In regard to the stipulation of facts, as I have said, I am very willing to stipulate, make an effort to stipulate to all that we can, and I am satisfied that there are many things, documents, matters in the way of formal proof that could be agreed upon and stipulated, and save a lot of time in introducing them before this Commission. There are many other facts which can be stipulated.

I would be willing to make every effort to agree upon such a stipulation within two weeks. But I must say further that I think that counsel for Panhandle has misconceived the scope of this proceeding. They apparently have not read the complaint. I would like to call their attention to the fact that in this complaint we allege that the proposed sale of gas to the Ford Motor Company,

(Reading): "Is part of a definite plan and purpose by Panhandle to make sales of gas directly to industrial consumers in all territory within this state which it is practical to reach by extension of its transmission lines, regardless of whether such consumers are now served by, or are within the territory now served by



Michigan Consolidated or other utilities furnishing gas within the state."

And the relief asked is,

(Reading): "Wherefore, Michigan Consolidated presents this complaint and prays that the Commission may institute an immediate investigation of the policies of Panhandle and its activities and conduct in relation to the furnishing and sale of natural gas to the Ford Motor Company and other industrial consumers in the State of Michigan, and particularly within the territory now served by Michigan Consolidated."

[fol. 176] And in addition to the investigation, we ask that the Panhandle be restrained, or that the Commission may take appropriate action to restrain and enjoin Panhandle from further proceeding with the extension of its facilities, or the furnishing or the sale of natural gas to the Ford Motor Company, or to any other consumer or consumers in the territory now served by Michigan Consolidated without the requisite authority and approval of this Commission, whatever that may be.

Mr. Williams: Mr. Dyer, will you pardon an interruption?

Mr. Dyer: Yes.

Mr. Williams: Isn't there similar language in the order to show cause?

Mr. Dyer: Well, I have not checked it with the order to show cause. I am not sure as to that.

Mr. Jennings: We are willing to agree to try and stipulate, and to stipulate everything that we can within the period of two weeks, at the same time reserving our question of lack of jurisdiction. I do not want to get into the position of having abandoned that question. We can get together with Mr. Dyer, or any other counsel that may be interested in the facts, and at least we can eliminate a lot of proof.

Mr. Dyer: I would think so, and, of course, it would be understood that the stipulation would be so drawn as to preserve the legal rights and the legal contentions of all the parties.

Mr. Jennings: Yes. We would like to have a copy of the complaint.

Mr. Dyer: I will see that you get one.

Mr. Williams: Mr. Chairman, one of the issues before the Circuit Court of Ingham County in Chancery was as to the appropriate remedies of this company and at that time I took the position that they could appear before [fol. 177] this Commission and make a motion to dismiss and save to themselves that question, and I would like to so stipulate on the record at this time, that if counsel goes ahead and helps in the preparation of this record by stipulation, thereby he waives no right or any benefit he would have with his motion.

Mr. Jennings: Thank you, Mr. Williams. That is exactly what I want.

Mr. Dyer: And that is agreeable.

Chairman McBrearty: Well, now, will this stipulation of facts be before the Commission by the 31st, which is two weeks from today?

Mr. Dyer: I will say that we will make every effort, but I have had the experience before in matters of this kind, and I know that sometimes things happen which unavoidably delay. But I will say that we will make every effort to, Mr. Chairman.

Mr. Jennings: Couldn't this matter be continued for two weeks, with the privilege that any of us, if something turns up that we cannot do it, to ask for a later date?

Chairman McBrearty: How do you want this matter to stand? Do you want this hearing to be adjourned until January 31? Can it be understood that if will continue at that time, with the Commission taking into consideration the stipulation of facts, and those facts that cannot be stipulated, we will hear from witnesses on that date?

Mr. Jennings: Yes.

Mr. Dyer: That is my understanding.

Chairman McBrearty: In other words, both of you will be ready, I presume, in ten days from now.

Mr. Jennings: But something might occur, so I think that we should each, all of us, have the privilege of asking for a little later date.

[fol. 178] Mr. Dyer: I would think in ten days from now we would know whether we would have to ask the Commission for a later date, or not.

Mr. Jennings: Yes.

Chairman McBrearty: It will be understood that this hearing will stand adjourned until January 31, at ten o'clock a.m., unless we hear that another date is agreeable to the parties.

CONTINUATION OF PROCEEDINGS BEFORE MICHIGAN PUBLIC  
SERVICE COMMISSION, FEBRUARY 14-15, 1946

Chairman McBrearty: This is D-3335, in the matter of the complaint of the Michigan Consolidated Gas Company, concerning direct sales of natural gas by the Panhandle Eastern Pipe Line Company to the Ford Motor Company.

Gentlemen, before we resume, the City of Dearborn has petitioned this Commission for leave to intervene in these proceedings, and their motion for leave to intervene is granted.

Mr. Williams: May I show upon the record that counsel for the several parties have been asked whether or not they have any objection to this petition, and they have all said that they have no objection.

Chairman McBrearty: Gentlemen, your appearances?

Mr. Jennings: For the Panhandle Eastern Pipe Line Company, Clayton F. Jennings, of Lansing, Michigan, and Mr. Samuel H. Riggs, of Chicago.

Chairman McBrearty: The appearances for the Michigan Consolidated Gas Company are the same?

[fol. 179] Mr. Dyer: They are the same as they were at the other hearing.

Chairman McBrearty: When we adjourned, you gentlemen were to stipulate as to certain facts. Have you met, and are you prepared to enter your stipulation on the record? Mr. Dyer?

Mr. Dyer: We have completed a stipulation of evidence, which has not been signed as yet, and we have nearly completed, but not quite, a rather lengthy stipulation of fact. We worked until after 11 o'clock last night, and then say that, just from the mechanical side of it, it could not be ready for this morning. So we thought that today we could put in such testimony probably as the parties wanted to put in, and then finish the stipulation tonight, and we would have both stipulations ready for you in the morning.

Chairman McBrearty: Is that agreeable, Mr. Jennings?

Mr. Jennings: That is agreeable. We worked as hard



as we could, but the mechanical side has not been completed.

Chairman McBrearty: Shall we proceed then with the testimony, until tomorrow, when the stipulation of fact will be before us?

Mr. Dyer: That is right, Mr. Chairman.

Mr. Jennings: If it please the Commission, we, of course, are here on the question of jurisdiction, on our special appearance and motion. At this time I wish to renew the motion I made at the hearing something like a month ago.

The only issue, as I see it, is the question of jurisdiction, whether or not this particular sale is one of a commodity transported in interstate commerce.

Of course, it is our position that as to that, this Commission cannot take jurisdiction, because it would be invading a field which, under the commerce clause of the Federal Constitution, has been reserved for Federal regulation.

Now, I think I should state my position also on the stipulation of fact, which is to be offered as soon as it is ready.

It is my position that on a motion of this kind, and on this particular motion, that the files of the Commission show all the facts that are necessary for it to determine whether or not this is a sale in interstate commerce, and, therefore, I object to the admission of any stipulation of fact, or stipulation of evidence, as being unnecessary, and something that would go to the merits of the cause after the jurisdictional question was decided, assuming that it might be decided by this Commission that it had jurisdiction.

Now, of course, those are rulings that can be made when the Commission deems fit.

Mr. Dyer: Mr. Chairman, it is not my understanding that under the petition which we filed, the issues in this case were limited necessarily to one sale to the Ford Motor Company. That was one of the incidents, one of the examples presented in our petition of the situation which we allege to be a general policy to do a direct business in Michigan. Our petition asked for a general investigation of the activities of the Panhandle in the state of Michigan along those lines.

Now, what position the Commission desires to take is not for me to say, but I would just like to have it appear

on the record that that was our feeling when this petition was filed.

Chairman McBrearty: Mr. Williams?

Mr. Williams: At this time, I should like to renew my request on the record that the Commission retain the decision of this case of the motion, rather, until such time as all of the facts are developed.

[fol. 181] One of the positions of the parties, and especially the Panhandle Eastern Pipe Line Company is that time is important here. This is a complaint proceedings. It is necessary, ultimately, to determine not only the question of jurisdiction, if that question be determined affirmatively, but whether or not there is occasion for the exercise of any limiting powers which the Commission may possess, and I am of the opinion that the interests of all the parties will best be served by proceeding to a full determination at this time.

Chairman McBrearty: This Commission will act somewhat as the Federal Power Commission acted. The same, or similar motion, was made there, the ground being approximately the ground here, that is, that no jurisdiction was in that body to regulate the direct sale, and proofs were heard in support of the Complaint of the Michigan Consolidated Gas Company in that case. The same procedure will be followed here.

The motion to dismiss will be taken under advisement, and will be decided after the conclusion of proofs.

Mr. Jennings: I suppose the Panhandle has the affirmative at this stage of the proceeding, being on their motion, and the Commission desires proofs in order to determine that motion.

I think the burden of going forward at this point is on the Panhandle, because we are here today on our motion to dismiss; but, at the last meeting, the Commission expressed a desire to have proof of facts before they could determine that motion. So, as I see it, the Panhandle now will produce its witnesses.

Chairman McBrearty: I do not agree with you, but it does not make too much difference, so long as the proofs come in.

The order of proofs I do not think is too important. I would think, normally, the complaint being by the Michigan Consolidated Gas Company, that they should proceed [fol. 182] Michigan Consolidated Gas Company, that they should

proceed to offer proofs in support of their complaint. That is what I think would be the normal procedure.

Now, because you make a motion to dismiss, it does not seem to me that the burden has changed; but I might be wrong on that. I would like to hear your argument.

Mr. Jennings: As I see it, this is a hearing on the motion at this point, and you desire proofs in support of the motion?

Chairman McBrearty: The motion to dismiss has been decided by this Commission, by my statement that it is taken under advisement. That is a decision on your motion. In other words, your motion will be heard by us, and decided by us, the proofs are in.

Mr. Jennings: Well, then, do I understand that the Commission does not desire proofs in support of the motion?

Chairman McBrearty: Well, I do not know of any other necessity for proofs in support of your motion.

Mr. Jennings: Of course, the ruling of this Commission, at the last hearing, was that they needed proofs to decide the motion.

Mr. Dyer: Well, Mr. Chairman, I do not have any feeling in the matter. If counsel for Panhandle desire to go ahead and put in some proofs, I think it is quite immaterial what order they come into the proceedings in.

Chairman McBrearty: I will hear from you, Mr. Williams, and then I want you to read the statement. I do not have the benefit of that.

Mr. Williams: The general impression which I have is, regardless of what the nature of the proceedings may be, that if a given party wants to assume the burden of proof, if he wants to take up that burden, if he wishes to go along [Vol. 183] with it, why, that is freedom of choice.

Now, it seems to me that what is happening here, the Panhandle Eastern has offered, and wants to undertake the burden, and if they do, I will be the last man in the world to deny them that privilege.

Mr. Jennings: Well, that is not our position at all. We do not wish to undertake the burden. We want to follow the proper procedure. I simply have in mind the ruling of the Commission at the last meeting, that you could not pass on the motion then made without having more facts presented.

Chairman McBrearty: Of course, but read the statement, will you? The facts were not to be presented by



you, but by the complainant. Is there any statement in that at the last meeting which could suggest that there was any thought on this Commission's part to make you proceed with proofs? You are here as a respondent. I do not understand that there is any rule of procedure which requires the respondent to carry a burden of satisfying the Commission that they are not doing something which the complainant says they are doing.

Mr. Jennings: You are correct in that statement, but, we are not here generally. We are only here specially. We are here simply on the jurisdictional question.

Chairman McBrearty: It does not make a particle of difference whether you are here generally or specially. In the order of proof, a complainant establishes a prima facie case, or it does not, and a special appearance or a general appearance does not change that general rule of procedure. Unless you know of some law, some administrative law to the contrary, why, that should be, I would think, the position of this Commission. If you want to go [fol. 184] ahead and prove something, it is perfectly all right with us to make any proofs that you see fit to offer, but I would think, so far, on this record, there is nothing to support anything. We do not have a scrap of testimony to support any order which we might see fit to make.

Mr. Jennings: Well, that was my understanding of your position, that is, that you needed to have something to support an order, including an order as to jurisdiction. But I have no desire to go ahead, if the Commission prefers to have the affirmative shown by the Michigan Consolidated Gas Company.

Mr. Williams: My understanding of the Commission's position is that it does not care which party assumes the affirmative. If the Panhandle Eastern Pipe Line Company wants to carry the burden of proceeding and of proof in these hearings, why, it is free to do so.

Chairman McBrearty: Well, then, our statement is on the record, and it seems to be clear, Mr. Jennings, that it is entirely up to you if you wish to go ahead at this point and produce proofs, I assume, to the effect that this contemplated sales does not come within any jurisdiction which this Commission has under the statute of this state, you are perfectly free to do so, although we assume we have jurisdiction by the statute itself.

Mr. Williams: Mr. Chairman, so that there will be no doubt upon the record, our position is this, that if Mr. Jennings, on behalf of his client, assumes the burden of proof here, his burden goes to the entire nature of the complaint, and not to a part of it. In other words, he should not properly, we feel, be allowed to take up just a part of the load. If he wants to carry the burden, why, he is free to do so, but he is not free to choose just what [fol. 185] part he is going to assume. If he wants to take the affirmative in these proceedings, I feel that that should be his right, but I do not feel that he should be permitted to pick and choose what part of it he is going to carry.

Mr. Jennings: We do not intend to assume the affirmative or the burden of proof, but if it is the ruling of the Commission that the facts should now be produced in support of the complaint, I think that the Michigan Consolidated Gas Company should go forward at this point. The record should show, however, that we are here only under a special appearance.

Chairman McBrearty: That is quite clear, Mr. Jennings, and we all understand your position, and your position is well taken. In other words, you do not concede that there is any jurisdiction. The only way that you can appear is to appear specially, and, in that way, you do not waive any of the legal rights that you have.

I think, Mr. Dyer, that the burden of establishing the complaint is upon the Michigan Consolidated Gas Company and, therefore, I think that it is your duty to proceed and offer proofs in support of your complaint.

Mr. Dyer: Of course, the main body of our proofs are in the stipulation of fact and the stipulation of evidence, which will be filed tomorrow. Aside from that, all that we have at this time are two witnesses to supplement or add to the facts which are covered in the stipulations.

Chairman McBrearty: Who are those two witnesses?

Mr. Dyer: Mr. Clark and Mr. Fink.

Chairman McBrearty: Do you expect those witnesses to testify to substantially the same facts that they testified to before the Federal Power Commission in January of this year?

[fol. 186] Mr. Dyer: They are very similar. There are some additional facts, perhaps.

Chairman McBrearty: Is it agreeable to counsel that that part of their testimony that will be the same as that already testified to—that is, is it stipulated that the record in the Federal Power Commission case be accepted?

Mr. Williams: Mr. Chairman, I feel that I should interpose an objection to that method of proceeding, and for this reason, the issue before the Federal Power Commission was a pretty narrow issue, and that question was whether or not the facilities of the Panhandle Eastern Pipe Line Company were adequate, so far as capacity was concerned, to permit the service to the Ford Company under this contract. There were many objections made upon the record before the Federal Power Commission, because the offer of testimony was considered to be outside the scope of the proceedings.

Now, these proceedings are not so narrow in purpose or character, and many an objection that was perfectly proper before the Federal Power Commission, because of the limited character of the proceedings, might not be good in these proceedings. The basis of my objection is that I would want this record clearly to show that these proceedings are not so narrow in scope, or in point of approach as it was before the Federal Power Commission, and that in offering their evidence the several parties should have the advantage of that fact.

Mr. Jennings: I agree with Mr. Williams entirely, and also for the further reason that neither Mr. Riggs nor myself were present at the Federal Power Commission hearings, and have no knowledge of what that testimony was, and I conceive that our cross-examination might be [fol. 187] quite different at this hearing than it was before the Federal Power Commission.

Chairman McBrearty: Then we will proceed without stipulation as to the Federal Power testimony.

Mr. Jennings: Well, let the record show that all testimony is being produced over the objection of counsel for Panhandle, and that they do not waive those objections by taking part in cross-examination or offering proof in their own behalf.

Mr. Williams: Mr. Chairman, I feel that the record is amply clear on that point. I think that at least once last meeting, and at least once before, we have made it clear to counsel that we recognize the fact that he has appeared specially, and that in participating, he is not



waiving any of his rights, and it would seem to me that such a broad statement is ample, and it would not be necessary to continue this repetition on the record. We intend by that offer to apply to the entire proceedings, and not merely to a part of them.

Chairman McBrearty: Well, there is no harm in repetition. I think, however, Mr. Jennings, that you will recognize that it will be time saving if during the proceedings if there are types of testimony that come within your general objection, that you save yourself the time, and the time of the Commission by objecting specially to that type of testimony, because you are covered, and you are protected by your special appearance here.

Mr. Jennings: By my statement, I was protecting the record, and also saving time, so that I would not need to object again.

Chairman McBrearty: Fine. I think that is perfectly proper to proceed that way, so that we will not have so many technical objections, and passing upon them each time a question is asked, and slowing up the record, and [fol. 188] diverting our thoughts, and your thoughts too.

Mr. Williams: Mr. Chairman, in trying to compose our procedural matters, as I understand the ruling of the chairman, it is that if Mr. Jennings has a specific objection to an offer of testimony, which differs from his general objection, that this commission is without jurisdiction over these proceedings, for example, that the given offer covers hearsay testimony, that he will so indicate his specific objections to the offers as they are made.

Mr. Jennings: That is my understanding, that Panhandle Eastern would object to incompetency, immateriality and irrelevancy.

Chairman McBrearty: The Commission will expect that the testimony will conform to rules of evidence, and certainly you ought to protect your client by making objection to matters that are irrelevant and immaterial.

CLARK, HALE AUSTIN, was thereupon called as a witness on behalf of the Michigan Consolidated Gas Company, and after having been first duly sworn by the Chairman to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Dyer:

I am Industrial Engineer of the Michigan Consolidated Gas Company and my profession is engineering. As Industrial Engineer, it is my duty to furnish engineering service to the industries of Detroit, in connection with their use of fuels, and to be acquainted with their fuel requirements, their heating requirements, and service [fol. 189] ing them. That requires me from time to time to see and contact the various industrial customers frequently, some of them perhaps two or three times a month, but all of them several times a year.

The Ford Motor Company comes within that classification. I contact them frequently. The Ford Motor Company is now a customer of the Gas Company operating under contract. I have a copy of the contract with me. (producing a document). The copy of the Ford contract that I have handed you is dated May 9, 1945.

Mr. Dyer: I might say for the purposes of the record that in the stipulation of facts, which we intended to file, this contract is stipulated in evidence as Exhibit No. 10, and, with the Commission's permission, we will consider it as in evidence. Is that right, Mr. Jennings?

Mr. Jennings: Yes. But I reserve the right to object to it on the question of evidence, but, now, I do not object to Exhibit 10.

Mr. Dyer: This will be offered as Exhibit 10, when the stipulation is filed tomorrow.

Chairman McBrearty: Very well.

Mr. Jennings: I assume, Mr. Dyer, that we can use the facts that are set up in the stipulation as if they were in for the purpose of examination of this witness?

Mr. Dyer: Yes. It makes it a little awkward, but there is no use to introduce these twice, and have two different exhibit numbers for the same exhibit.

Mr. Jennings: Yes.

(Witness continues): The contract provides for the

delivery of up to 15,000,000 cubic feet of gas per day at the Ford River Rouge plant, which is designated as 3674 Schaefer Road. Delivery is subject to interruption upon notice from the Gas Company, at which time the Ford Motor Company undertakes to discontinue the use of gas, and to use substitute fuel.

[fol. 190] The contract provides that the ceasing of use shall be within six hours of notice from the Gas Company. The rate schedule is the regular published schedule No. 13, as approved by the Michigan Public Service Commission. There are no other special provisions in it.

In the period when we were negotiating the contract, there was a great deal of discussion of the terms of the rate schedule No. 13, under which this contract is made, but an agreement was finally reached after some two or three years of consideration, and it was signed on May 9, 1945. Now, subsequently in this year, in discussing the contract to supply larger volumes, we were asked to eliminate certain items of the existing contract.

We were asked to eliminate a stipulation of a minimum annual charge of \$100,000. We were asked to eliminate a charge for the failure to interrupt the use of gas when requested by us. We were asked to eliminate certain other stipulations relating to the six-hour curtailment of service.

As a result of that situation, we prepared a new contract and submitted it to the Ford Motor Company on November 5, 1945. It was accompanied with a letter. I delivered it in person to Mr. Ormond on November 5, 1945.

Q. Do you have a copy of the letter, and a copy of the contract that you tendered?

A. Yes, sir, here it is (producing a document).

Mr. Dyer: I am going to ask, if you will, to mark that Exhibit 13.

We have twelve exhibits covered by the stipulation of fact now, and to save duplication in numbers, I think that this should be numbered Exhibit 13.

(The document above described was thereupon marked Exhibit No. 13, 2-14-46, B. D. C.)

[fol. 191] (Witness continues): At the time I tendered this to Mr. Ormond, we discussed it with him, and we had



discussed it with him earlier. That is, the contract itself was the result of considerable discussion.

By Mr. Dyer:

Q. What action was taken by the Ford Motor Company on this contract?

Mr. Jennings: I think I must object to any testimony concerning the contract that was submitted subsequent to October 20, 1945. Certainly any action that Ford took on this tendered contract would not be binding upon Panhandle.

Mr. Dyer: I do not know as there is any claim that this is binding on Panhandle, Mr. Chairman. This is just a development of the factual situation, which is pertinent to the question that we are considering here. It can be answered in a few words, and that will be the end of it.

Mr. Williams: Mr. Chairman, it will appear that one of the issues here under the complaint is as to whether or not the Panhandle Eastern Pipe Line Company has undertaken to serve ultimate consumers within a territory that is already being served by another utility. One of the complaints made by the Michigan Consolidated in their complaint is the fact that Panhandle is invading their territory and, if I understand their position, their position is that they are presently serving the Ford Motor Company within their territory, and that the contemplated service which the Panhandle Eastern Pipe Line Company is to render not only is within their territory, and to their customer, but is an identical service which they had offered to that customer.

Now, it seems to me that the testimony offered is at least within the scope of the proceedings. Whether it is competent evidence, or not, I will leave to the argument of their own counsel.

[fol. 192] Mr. Jennings: One of my points is that here is a contract tendered after Ford and Panhandle had each bound themselves to a contract which is still subsisting; and any attempt to abrogate that contract by a subsequent contract with the Michigan Consolidated and Ford is not competent.

Chairman McBrearty: I think that the Commission is entitled to have the groundwork, to know the groundwork, and if there is any structure to be built on it, that is up

to the attorneys representing the Michigan Consolidated Gas Company to build it as high, or as long, or as broad as they wish; but I think we are entitled to see what the particular groundwork is, and then we can go on and limit the building, if we wish to.

Proceed, Mr. Dyer.

(By Mr. Dyer continuing):

Q. What were the changes in terms between this contract and the one then subsisting with the Ford Motor Company, the contract of May 9, 1945?

A. The \$100,000 annual minimum charge of the existing contract is omitted. Perhaps I should say that the annual minimum charge of the existing contract, which was \$100,000, is omitted entirely in the new contract. The charge for failure to interrupt gas usage when it is requested is omitted from the existing contract. If they failed to interrupt, when they were told to interrupt, we had a penalty clause in our first contract. In our second contract, we eliminated that objectionable feature.

We increased the daily delivery, which was 15,000,000 feet per day in the existing contract to 50,000,000 cubic feet per day in the now submitted contract. It is a maximum allowed take. The customer may take as little as he pleases. There is no requirement in this contract that the Ford [fol. 193] Motor Company take any more than they did under the previous contract. There are essentially no other changes. The rate is the same.

We do not know what action the Ford Motor Company has taken on this contract. They have not dealt with the matter any further with us. It was submitted to the Ford Company, and it was never executed by them. It has never been returned to us declined.

Under the contract of May 9, 1945, there were no limitations on the purposes for which the gas could be used. It was provided that the gas, under the old contract might not be used for space heating, or for large volume steam generation. There is no limitation under the new contract which the Ford Motor Company now has in hand. They can use it for any purpose. There was no change in rate.

I am acquainted with the situation at the Ford Rouge plant, that is, the physical characteristics as relating to the location of the plant, and the location of our Panhandle station. I have been over the ground and I am familiar

with it. I have seen that pipe following the general direction that a line might take leading from the Ford Motor Company Rouge plant to the vicinity of the Panhandle main transmission line has been laid on the ground, and some work has been done at a bridge crossing at a point where such a line would cross. And, further, surveyor's stakes have been driven along another part of the line, the direction which such a line might take. Within the Ford plant, there has actually been completed an underground line which in some distance parallels the 12-inch line through which Ford takes from us, and which approaches the point where apparently the line that is to go direct to Panhandle would connect with it.

I do not know of any contract that has been let for the construction of the line—not of my own knowledge. I have [fol. 194] prepared a map showing the location of this line as I determined it from my examination of the premises.

(A map was then marked Exhibit No. 14, 2-14-46, B. D. C.)

Mr. Dyer: Before we leave the question of the proposed Ford contract, I would like to offer Exhibit 13 in evidence.

Mr. Jennings: My objection to Exhibit 13 is that it is not competent, an unexecuted contract, and submitted subsequent to the contract between Panhandle and Ford.

Chairman McBrearty: The Commission will accept this exhibit in evidence, attaching such weight to it as it sees fit when it considers the entire question before it.

(Witness continues): The map marked Exhibit 14 is a map which was prepared by my department under my supervision, showing the route of this line.

Mr. Jennings: There are Ford representatives here, and if they can agree that that is the line, it might save a little time. Mr. Clark might be mistaken, otherwise. But there are people here who can determine that, or point out where the line is.

Mr. Dyer: Are the Ford representatives here now?

Mr. Jennings: Yes.

Mr. Dyer: Suppose they take a look at it right now.

Chairman McBrearty: That would be a good idea.

(The map in question was then handed to Mr. Jennings, for examination.)

(Thereupon a short intermission was taken.)



Mr. Dyer: I would like to have it appear on the record that the map, Exhibit No. 14, has been examined by representatives of the Ford Motor Company, who state, I [fol. 195] believe, that the map is substantially correct, except that they have shown an extension within the Ford plant from the point where the line on this map ended, the extension being shown in green, and the pipe being overhead. As originally shown on the map, Exhibit 14, the line ended with the underground pipe that had been installed by the Ford Motor Company.

Is that statement correct?

Mr. Jennings: That is a correct statement.

Mr. Dyer: I will offer it in evidence now.

Mr. Jennings: It has been corrected now to show substantially the situation.

Chairman McBrearty: The exhibit is received with those differences noted.

(Witness continues): There are shown on the map lines in red, and lines in black, dotted. The lines shown in red are the existing distribution lines of the Michigan Consolidated Gas Company. The lines shown dotted are the proposed connection between the Panhandle Eastern Pipe Line Company and the Ford Motor Company. This connection starts from a point in South Dearborn Road approximately 3,000 feet before the point where we take gas from the Panhandle Eastern Pipe Line Company. The proposed line then proceeds southeasterly along South Dearborn Road. The point of connection with the Panhandle line is shown on the upper left hand, or, near the upper left-hand corner of the map. It is at a point on South Dearborn Road west of the D. T. & I. Railroad.

The line proceeds down South Dearborn Road to the intersection of Greenfield Road, and then proceeds north in Greenfield Road across the River Rouge. It then crosses the road into the property of the Ford Motor Company, and proceeds north parallel to Greenfield Road to the intersection [fol. 196] of the Butler Road, and then turns east, continuing on Ford property, parallel to the Butler Road; and then in a general southeasterly direction to a point about 200 feet, or, less than 200 feet north of the point where the existing 12-inch line between our metering station and the Ford Motor Company crosses Schaefer Road. At this point, the proposed line crosses Schaefer Road, and enters the Ford property. None of it has been laid, excepting that

which is shown on the map as being within the Ford property, namely, the portion that is east of Schaefer Road. There is no indication that the line has been laid at all to the west of Schaefer Road or under Schaefer Road. Whether it has been laid under the Michigan Central right-of-way I do not know.

East of the Michigan Central right-of-way is vacant land. I do not know how far without an examination of it. Beyond the Michigan Central right-of-way the line continues as an underground line for nearly 2500 feet. It is in vacant land. The existing 12-inch line that I speak of is shown on the map.

The 12-inch line through which the Ford Motor Company is supplied under our existing contract, starts from a metering station near the intersection of Greenfield Road and Allen Road, and within 200 feet of a point from which the Michigan Consolidated Gas Company receives gas from the Panhandle Eastern, and proceeds in an easterly direction, bearing north for about 1400 feet, and then proceeds directly east, crossing the River Rouge, Schaefer Road, Michigan Central Railroad, and entering the Ford property. It is shown on the map as a solid black line. That is the line through which we now serve gas to the Ford Motor Company. We are serving gas to Ford now. Our contract has not expired. It may be cancelled by the Ford Motor Company on May 9, 1946. However, if the Ford Motor [fol. 197] Company takes no action 30 days before May 9, it automatically is renewed for another year. The gas that is supplied to the Ford Motor Company is used in the Ford plant for their own purposes. We know that the Ford Motor Company, our customer, is the consumer of the gas.

The Ford Motor Company owns the 12-inch line. It was originally built by the Defense Plant Corporation in 1942, late 1941 and 1942. Usage began over it in the late summer of 1942.

Chairman McBrearty: Well, if they own the line, I do not see the point in constructing another line. In other words, if they already have a line into their factory, and if they are permitted by law to deal directly with the Panhandle Eastern Pipe Line Company, I do not understand the necessity for constructing another line running off in a different direction, at a terrific cost.

Commission- Schouten: Isn't that because one is 18 inches, and the other is 12?

A. No.

Chairman McBrearty: What is the proposed line, how large is it,

A. The proposed line is 18 inch.

Chairman McBrearty: Six inches larger?

A. But the present 12-inch line is ample to deliver to the Ford property all its requirements at present, and for some time, as we understand them.

Commissioner Shilson: The existing line taps the line owned by the Michigan Consolidated Gas Company, doesn't it?

A. Yes, it taps into our system.

Chairman McBrearty: I understand, but, take the old line, Mr. Clark, how far away does that come from the direct main line of the Panhandle Company, in feet?

[fol. 198] A. It is about 200 feet from the point where we actually receive the gas from Panhandle.

Chairman McBrearty: I cannot understand why, if they have the right to buy gas directly, why the necessity of a new line? Why not build 200 feet and tap on to the main line directly?

A. That was an engineering problem that Ford worked out. I do not know the answer to that.

By Mr. Dyer (continuing):

Q. To make the situation clear, Mr. Clark, suppose you trace on the map the present Panhandle Eastern transmission line, showing its proximity to the present Ford 12-inch line?

A. Starting from the point mentioned heretofore, at the northwest corner of the map on South Dearborn Road, west of the D. T. & I. Railroad, the Panhandle Eastern Pipe Line Company's line through which they supply us with gas, comes down in a southeasterly direction down South Dearborn Road (indicating). That is the solid black line. This solid black line comes down south Dearborn Road paralleling all the way to the inter-section of Greenfield, the proposed 18-inch line, and the existing line then continues about 600 feet further southeasterly on South Dearborn Road, to the point at which Panhandle delivers gas to us for distribution to our customers.

From Greenfield Road it turns easterly into the metering



station. That is indicated on the map and described as the Panhandle Eastern Pipe Line Company measuring station. Then from the measuring station it goes generally in a northerly direction about 400 feet and comes into our distribution system about 400 feet from the measuring station. At that point the Panhandle line is about 300 feet from the existing Ford Motor Company 12-inch line. [fol. 199] Commissioner Shilson: What is the capacity of the 12-inch line, Mr. Clark, the existing line?

A. The 12-inch line can deliver from the station at which we meter the gas to the Ford Motor Company, from that point it can deliver 63,000,000 cubic feet per day to the Ford property; at least, that is the calculation that has been made recently, and arrive there at about seventy some pounds pressure.

Chairman McBrearty: I guess the answer is that Ford wants upwards of 100,000,000 cubic feet for industrial use. The present line is not adequate. Isn't that the answer?

A. The adequacy of the line is entirely a matter of what the end pressure needs to be to meet the Ford Motor Company's needs. I have not figured out the capacity for delivering as much as 100,000,000 feet a day, but we have the figures on the delivery of 63,000,000 feet a day and it is ample for that. And then, from that point on, it is a matter of what intra-plant pipe line the Ford Motor Company desires to lay to deliver gas to its various properties, that is, its various buildings I should say.

Commission- Schouten: How much larger is that 18 than the 12?

A. The ratio of 36 to 81, about two and a half times.

Mr. Williams: Mr. Clark, doesn't the answer to that question depend a lot upon the composition of the pipe? In other words, that is merely a direct relation between what I might call the bore of the pipe. How much pressure the pipe can stand depends upon other characteristics, does it not?

A. Well, the pressure, the initial pressure on the line is, as far as we are concerned, 100 pounds per square inch, and I do not understand that any excessively higher pressure [fol. 200] would be contemplated for the 18-inch line. That line is probably also planned to be at 100 pounds initial pressure.

Mr. Williams: Can you deliver 63,000,000 over the 12-inch line with an initial pressure of 100 pounds?

A. We can.

Q. (By Mr. Dyer, continuing): Is the map, Exhibit 14, drawn to scale?

A. It is.

Q. And that scale is indicated on the map, is it?

A. It is.

Mr. Dyer: I would like to have a map marked Exhibit No. 15.

(A map was thereupon marked Exhibit No. 15, 2-14-46, B. D. C.)

(Witness continues): The map which has been marked Exhibit 15 represents gas lines within the Ford property from Schaefer Road eastwardly.

Mr. Dyer: I would like to have it appear on the record, Mr. Chairman, that this map has been submitted to the engineer for the Ford Motor Company, who is in the courtroom, and I understand that the map is substantially correct.

Mr. Jennings: That is right.

(Witness continues): This map was prepared under my direction in connection with the supplying of an engineering service to Mr. Jennens of the Ford Motor Company, for the purpose of determining what volume of gas and what pressures might be available at the eastern extremity of the 18-inch line which the Ford Motor Company is now laying within its property, upon the basis of a connection of the existing 12-inch line with that line. The upper part of the map indicates the connection between the existing 12-inch line and the proposed 18-inch line. It was desired to determine what pressures might be available at the far [fol. 201] eastern end of that line which is marked F, if a connection were made with the existing 12-inch line from our metering station to the Ford plant, if this connection were made at point B, which is just inside the Ford property at Schaefer Road, and the calculations are on the basis of the delivery at 63,000,000 cubic feet per day, which would come over our 12-inch line to point B, as shown on the map, just east of Schaefer Road, and from there be tied in to and delivered through the 18-inch line which the Ford Motor Company is now running. It indicates that the pressure at the farthest point of delivery would be 65 pounds per square inch. That point is indicated on the map as point F, just west of Miller Road. The 18-inch line is

underground for a distance of about 3500 feet to a point just east of Schaefer Road. I am told that the Ford Motor Company proposes an overhead line. There is not any line there now, as far as I know.

Mr. Dyer: I would like to offer Exhibit No. 15 in evidence.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer: That is all at this time, Mr. Clark.

#### Cross-examination.

By Mr. Jennings:

Under our present contract with Ford there is no requirement as to the pressure we are required to deliver the gas at into the mixing facilities of the plant. A pressure as high as 95 pounds is available at the point where we deliver it into the 12-inch line, which was built by the Defense Plant Corporation. We take off at a pressure of 85 pounds to deliver into the 12-inch line. Prior to the time [fol. 202] that I submitted this contract, November 5, I had not previously taken up and discussed with the Panhandle Eastern Pipe Line Company the question of delivering 50,000,000 cubic feet a day for industrial use to Ford.

I do not know of my own knowledge whether any of the officials of our company had done so. I do not know anything about it one way or the other. We did not know at the time we submitted this contract, that Ford had entered into a contract with Panhandle.

Under this proposed contract which we submitted in November, the pressure at which we were required to deliver gas to mixing facilities inside the Ford plant was not stipulated. The contract stipulates the pressure at the metering station, but not at the outlet of the line, because we didn't know how long the line was to be. Therefore, we could not compute the pressure at the point of delivery into the mixing facilities. That would be a very important consideration for the person or corporation using gas. The pressure is just as important as the volume. It is not true when I say that we could have made a delivery over this 12-inch line, that I mean as to volume only, and not as to pressure. We had made computations as to pressure on this proposed contract of 50,000,000 cubic feet per day upon the basis of a length of 5,014 feet of line. That is the length that the



Ford Motor Company gave us. 5,014 feet from our station, we could deliver 50,000,000 cubic feet with a terminal pressure of 69.8 pounds. That is at the end of the 5,014 feet.

We take the gas at a pressure of 100 pounds at the Panhandle Eastern Pipe Line Company station, and there would be a slight drop to the point of the Ford Motor Company meter, which is close by. I said we only had 95 pounds available but our contract with the Panhandle Eastern per-[fol. 203] mits us to obtain 100 pounds. We have not asked for it, but we have the right to ask for it and get it.

The contract that I submitted is to take the place of the presently existing contract. The maximum delivery under that contract that we would make would be 50,000,000 cubic feet per day. It is not 50,000,000 cubic feet, plus the present 15,000,000. If Ford required 63,000,000 or 65,000,000, the submitted contract would not cover that much gas. When I say 50,000,000 cubic feet per day, I am referring to a 24-hour day. If Ford required 50,000,000 cubic feet in any one day, they would have to spread that over 24 hours, that is if they needed 70 pound pressure at the end of 5,014 feet. If they needed 60 pound pressure, they would not have to spread it over 24 hours. I cannot say whether we could make delivery of 50,000,000 cubic feet spread over an eight-hour day, with the present facilities as they are now built, because that would involve an elaborate calculation. I do not know whether we could or not. If we had an 18-inch line I couldn't answer whether that could be done. The formula for calculation of pipe lines is an involved thing, and I cannot answer offhand a question of that sort. I wouldn't say that Ford might reasonably construct an 18-inch line to get deliveries of the maximum within the shorter working day. The present 12-inch line is ample to take care of all the Ford Motor Company has any immediate need for, and to take care of their requirements for some time. That statement is based upon what the Ford Motor Company engineers have told me and the experience that I have had in the past.

They have outlined to me their program as to reconversion, and the use of gas facilities, instead of competitive fuels. That portion of South Dearborn Road that I was [fol. 204] testifying about has been re-routed and is now Ford property. About 3000 feet of this 18-inch pipe within the Ford property, east of Schaefer Road, have actually

been laid and covered. None has been laid on County property, or otherwise owned property, not to my knowledge. The part that is laid is east of Schaefer Road. I saw survey stakes along the proposed route and pipe laid or strung along there. The pipe is not strung up to the point where they would make connection with the main transmission line of the Panhandle. It is strung about as far as approximately the intersection of South Dearborn Road and Greenfield Road.

If we entered into a contract with Ford to deliver 50,000,000 cubic feet per day, we did not contemplate the use of a pipe line other than the 12-inch line. The calculation with Ford as to an 18-inch line is illustrated on Exhibit No. 15 that has just been put into evidence. That calculation was made for the purpose of giving to Ford the pressure that they could have at the extreme end of their plant on a delivery of 63,000,000 cubic feet per day. That calculation was based upon a 24-hour day. That would not be a correct calculation if they work eight hours or twelve hours. What that calculation might be, I don't know without actually going through the figures with a slide rule. I might say that the exhibit shows 63,000,000 feet per day, and also shows the hourly delivery, and the hourly delivery was agreed upon as being satisfactory to the engineers of the Ford Motor Company. They are the production men themselves, as far as I know.

As to this proposed contract, we eliminated the penalty. The interruptible feature is still in it, that is, the six-hour notice. Being an interruptible contract, in so far as our company was concerned, whether or not it would be interruptible as far as Panhandle was concerned did not enter [fol. 205] into my negotiations. I am aware, of course, that the Panhandle line is something like 1600 miles up to the point where they deliver to us. Panhandle has no authority to interrupt this contract. Our contract is only for 125,000,000 firm. Of course, the purpose of an interruptible clause in a contract is to protect the firm users, which are largely space heating, homes, and so forth.

Mr. Jennings: That will be all.

Mr. Williams: Just a minute, please.

Because of the fact that some of the facts in these proceedings are to be stipulated, and not knowing just what counsel are stipulating, if I may, I would like to ask

a few questions of counsel before I determine whether or not I have questions to ask of this witness.

I assume that counsel are stipulating to the fact that the Panhandle Eastern Pipe Line Company is a foreign corporation?

Mr. Dyer: Yes.

Mr. Jennings: Yes.

Mr. Williams: I assume they are stipulating that such corporation is domesticated in Michigan.

Mr. Jennings: That is right.

Mr. Williams: And I assume that they are stipulating that Panhandle has offered to sell gas to the Ford Motor Company?

Mr. Jennings: Yes, and we put the contract in.

Mr. Williams: And I assume that they are stipulating that the source of supply from which the Ford gas will come is the same source of supply from which the gas received by the Michigan Consolidated Gas Company comes?

Mr. Jennings: Well, it is that, but not in exactly that language.

[fol. 206] Mr. Williams: Well, in other words, all of this gas comes through the same pipe line up to the locality here under discussion?

Mr. Jennings: Oh, yes.

Mr. Williams: It is the same pipe line?

Mr. Jennings: Yes.

Mr. Williams: And I assume that counsel are stipulating that the take-off point of the 18-inch line, the 18-inch pipe line, and the take-off point of the 10-inch pipe line are approximately 200 feet apart?

The Witness: They are 3,000 feet apart.

Mr. Williams: 3,000 feet?

Mr. Dyer: The take-off points are that far apart, but the lines come as close together as you said.

Mr. Jennings: We said that they were substantially parallel.

Mr. Dyer: Yes. In other words, the 18-inch line runs down by the side of the Panhandle line for about 3,000 feet, in order to hook into it, instead of hooking into it at the point that you have in mind.



# Cross-examination.

By Mr. Williams:

Q. Now, Mr. Clark, as an engineer, and on the basis of your past experience and your knowledge of the physical conditions there, do you know of any reason why the gas which the Panhandle Eastern Pipe Line Company proposes to sell to the Ford Motor Company could not be carried the 3,000 additional feet up to the point of connection between your line and the 12-inch line of the Ford Motor Company?

Mr. Jennings: I object to the form of the question, as being incompetent. It is not the point of connection that is important, but the point where it is brought into the [fol. 207] mixing facilities of Ford, at the pressure they require.

Chairman McBrearty: We will take the answer.

A. No.

(Witness continues): Based upon my past experience and my knowledge of the facilities, I do not know of any reason why, if the engineers of the Ford Motor Company consider it advisable to construct this 18-inch line which is indicated on Exhibit 14, why that 18-inch line may not be connected into the facilities of the Michigan Consolidated Gas Company. As an engineer, there are no physical difficulties in my mind that would prevent the connection of the proposed 18-inch line with the facilities of the Michigan Consolidated Gas Company. There are no physical obstacles to our supplying gas through that 18-inch pipe line if it were connected with our facilities. Assuming that the gas is made available to us by our supplying company, the Panhandle Eastern Pipe Line Company, there is no physical reason why we could not make delivery of that gas to the Ford Motor Company.

Mr. Dyer: Just a moment, before we adjourn. I am not sure that I offered Exhibit 13 in evidence, which is the contract that has been submitted to the Ford Motor Company, and a letter accompanying the contract.

Chairman McBrearty: The letter and the contract are received in evidence, subject to objections stated by Mr. Jennings.

(Thereupon a recess was taken for luncheon.)

## Re-direct examination.

By Mr. Dyer:

I was asked this morning on cross-examination regarding the six-hour provision in the proposed Ford contract, the [fol. 208] six-hour provision regarding interruptions. That provision was because the Ford Motor Company objected to the one-hour provision which we normally have in contracts, and the objection was based on the fact that their operations were so involved in the plant, which is some two and a half or three miles long, and a mile wide, or more—so involved that they could not manage to complete their conversion from gas to stand-by fuel within one hour and, therefore, we put in the six-hour provision. That was done at their insistence.

We proposed to handle it by anticipating the hour when we would need the gas shut off by as much as six hours, and notifying them ahead of other customers, who had an hour to get off. We keep a check on weather conditions. We can foresee weather conditions as soon as anyone else from the information that we have. We need to, and we do.

I am familiar with the purchase terms, that is, the price to be paid for gas, under the proposed Ford contract. I have examined the executed contract between Panhandle Eastern and the Ford Motor Company. I have made a comparative study of the rates for gas under the two contracts. I have computed it on two bases, one, that the Ford Motor Company take 25,000,000 cubic feet per day, plus or minus 10 per cent, as stipulated in the contract, for five days a week, and 15,000,000 cubic feet per day for two days per week as they are permitted to take it. The other basis is on the basis of their taking 25,000,000 cubic feet per day five days a week, and taking no gas the other two days of the week. I have these computations here (producing a document).

(The documents above described were thereupon marked Exhibits 16 and 17, 2-14-46, B. D. C.)

[fol. 209] Chairman McBrearty: To clarify this, Mr. Clark, is the 25,000,000 for five days, and the fifteen two days one contract; and the twenty-five five days, and no gas the other two days, another contract, or are they both interpretations of one contract?

A. They are both interpretations of one contract.

Chairman McBrearty: And which is that one contract, the Panhandle contract?

A. That is the Panhandle contract.

Chairman McBrearty: All right.

(Witness continues): The provision of the Panhandle contract is that on Saturdays and Sundays and holidays Ford may take not to exceed 15,000,000, which gives them the option of taking nothing, or anywhere up to 15,000,000 on those days. It requires the Ford Motor Company to take 25,000,000, plus or minus 10 per cent, five days per week. The 10 per cent option is Ford's. Exhibit 16 is the computation based on 25,000,000 feet a day five days a week, and none on the other two days.

Q. Will you proceed to explain how you computed it?

Mr. Jennings: For the record, I object to the materiality of this line of testimony and these exhibits before the Commission.

Chairman McBrearty: This testimony is being taken subject to that objection.

(Witness continues): The detail of the computation of the cost to Ford of purchase of this volume of gas under the existing contract with the Michigan Consolidated Gas Company is shown on Exhibit 16, calculated in accordance with the price schedule of the contract, and the detail of the cost in the corresponding picture under the Ford-Panhandle contract is shown. At the bottom of the page is shown that Ford, under the Panhandle contract, would pay 2.384 cents per therm for gas. Purchasing the same volume from the Michigan Consolidated Gas Company it [fol. 210] would be 2.085 cents per therm. The rate then that would be paid to the Panhandle is 14 per cent higher than that which would be paid to the Michigan Consolidated Gas Company, and that amounts to a total of \$194,350 per year that would be paid to the Panhandle more than would be paid to the Gas Company if the same amount of gas had been purchased under the existing Ford-Gas Company contract.

Exhibit No. 17 is a calculation based upon the purchase of 25,000,000 cubic feet per day five days per week, and 15,000,000 cubic feet per day two days per week. The calculation is in the same manner as in Exhibit 16, and the results are that under the Panhandle contract, Ford would



pay 2.417 cents per therm; and under the Gas Company contract Ford would pay 2.068 cents per therm, which means that the Ford Motor Company would pay Panhandle 17 per cent more for its gas than it would pay the Gas Company for the same volume of gas, which amounts to a total of \$281,308.00 per year that would be paid to the Panhandle Company in excess of what would be paid to the Michigan Consolidated Gas Company under the existing contract with the latter.

Mr. Dyer: I offer Exhibits 16 and 17 in evidence.

Mr. Jennings: Subject to the objection I have made.

Chairman McBrearty: They both may be received subject to the objection.

#### Recross-examination.

By Mr. Jennings:

The plan of interruption which I testified to is for the protection of our own firm contracts. No, we have made no complaints because it costs Ford more to buy from Panhandle than it would from us.

(The witness was thereupon excused.)

[fol. 211] **FINK, HENRY**, was thereupon called as a witness on behalf of the Michigan Consolidated Gas Company, and after having been first duly sworn by the Chairman to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct examination.

By Mr. Dyer:

I am a vice-president of the Michigan Consolidated Gas Company, and general manager of the Detroit district. I am familiar with the existing contracts and rate schedules governing the purchase of gas by the Gas Company from the Panhandle Eastern. The contract calls for a maximum of 125,000,000 cubic feet of firm gas. Firm gas is gas not subject to interruption by the pipe line company. Gas delivered to the Michigan Consolidated Gas Company on a firm basis is not interruptible by Panhandle Eastern

Pipe Line Company. Our demands for gas from Panhandle under that contract vary according to the season of the year. Our average customer demand during the summer months is approximately 60,000,000, or somewhere in that neighborhood, so that there is available under the contract, if we had sale for it, an additional 65,000,000 cubic feet of gas per day during the summer months. Those are the months between June 1 and September 1; then there would be decreasing amounts available up to as late as December 1. This full amount of 65,000,000 approximately, would be available from June 1 to September 1, then would decrease down to approximately 30,000,000. For the months of September, October and November, we would have approximately 30,000,000 available gas.

[fol. 212] We sell firm gas all during the year. If we wanted to enter into such a contract, and if the people on the other end wanted to become a party to it, we could sell a great many millions of cubic feet of firm gas for three months of the year, when we do not have space heating customers. It would, in fact, be firm, because the chances of interruption would be very slight. But it would have to be sold on an interruptible contract. To protect the regular customers it would have to be sold on an interruptible contract, so as to permit the company to interrupt, when the occasion comes, although both of us would know that it was practically firm gas.

A firm customer once on the line is to be served throughout the year. There is no interruption in the supply of gas to a firm customer. In my use of the term "firm customer," I mean a customer who is entitled to get that amount of gas every day throughout the year. It is true that we buy a substantial amount of firm gas which we have available for sale during the summer months, which would be firm during those summer months, but interruptible the rest of the year. We purchase it as firm gas, but we sell it as interruptible gas. But it would, in fact, be firm, even to the interruptible customer, during the summer months, because there would be little or no occasion for interruption.

The firm load during the summer months, of 60,000,000, includes a number of industrial customers. In other words, we have a number of industrial customers that are firm customers throughout the year. The contract with Pan-

handle as originally written provided for a firm delivery of a fixed quantity of gas per day, and there is a provision in the contract for the sale of gas to special industrial customers, or, shall I say, there is provision for the negotiation [fol. 213] between the Michigan Consolidated and Panhandle Eastern Pipe Line Company for gas to be purchased under an interruptible basis, and for sale to an industrial customer. That contract is filed as a part of the Panhandle rate schedule, with the Federal Power Commission in Washington.

Mr. Dyer: This contract will be introduced, I might say for the record, with the stipulation of fact, as Exhibit 2-A.

(Witness continues): Paragraph 5 of Article II of the contract is the paragraph I have just referred to. We have never purchased any gas under the provisions of that paragraph. All of our purchases to date have been under the firm provisions. We have made repeated efforts to negotiate contracts under the provisions of Paragraph 5 of Article II for gas to supply special industrial customers, but we have not been successful in negotiating such an agreement with the Panhandle Eastern.

Chairman McBrearty: Mr. Dyer, it is not clear to me what you are referring to. Paragraph 5 of Article II I presume is some provision of your contract with the Panhandle Eastern?

(Witness reads Paragraph 5, of Article II, on page 5):

"In the event that buyer shall have a prospective special industrial customer, and shall desire to purchase natural gas to serve such customer, the parties hereto will endeavor to negotiate a separate contract to cover the price at which seller will furnish such gas to buyer. Each such separate contract shall depend upon seller's having available a sufficient supply of gas, and shall include a provision for the temporary curtailment or discontinuance of service thereunder [fol. 214] in the event of an insufficiency of seller's supply for other deliveries under this agreement."

Mr. Dyer: Does that clarify the situation?

Chairman McBrearty: I believe so.

(Witness continues): That is interruptible gas. I am familiar with the rate schedules recently filed by the Panhandle Eastern Pipe Line Company with the Federal Power



Commission. I have the provisions of Schedules GD-1 and RD-2 with me. (producing documents).

Mr. Dyer: I might say that these schedules will be introduced in the stipulation as Exhibit 2-F.

(Witness continues): Under Rate Schedule RD-2, there is made available to the Michigan Consolidated Gas Company, being a purchase of gas from the Panhandle Eastern Pipe Line Company under rate schedule GD-1, interruptible gas over and above the firm amount of 125,000,000 cubic feet a day, to supply industrial customers with whom Michigan Consolidated has a contract, which provides for the interruption of supply to the industrial customer. There is no provision in the schedule covering the amount. The limitation is merely the pipe line company's capacity to supply. The Panhandle Eastern could decline to supply us upon our request if they did not have available capacity.

Chairman McBrearty: What determines whether they have available capacity? How do you go about it? If you want 50,000,000 cubic feet a day to supply Ford, and they say, "So sorry," who determines whether they have the capacity, or whether it is an arbitrary refusal on the part of Panhandle to supply the gas, interruptible gas, under the provisions of that rate schedule?

[fol. 215] A. Well, it is my opinion that Panhandle would be required to offer reasonable proof of insufficient capacity.

By Mr. Williams: The Federal Power Commission is the one that accepted and approved those rates. The Federal Power Commission is the Federal agency that has control over transportation of gas in interstate commerce. The question as to whether or not the schedule of rates applicable to this situation were being violated, would be a question for the Federal Power Commission to determine. That is my opinion.

(By Mr. Dyer, continuing): In other words, if the request was refused, and we felt improperly refused, our remedy would be to bring the matter before the Federal Power Commission for their determination. That would be my opinion of the procedure. It has never been done. We have not had to do it. The Federal Power Commission's order, as I recollect it, was dated November 2, 1945. Prior to that time we did not have the right under the rate schedules of buying the interruptible gas now provided by Schedule RD-2. That is a provision that we did not have here-

tofore. Since November 2, we have made application to the Panhandle Eastern Pipe Line Company for gas under Schedule RD-2. The price fixed in Schedule RD-2 for gas supplied under that schedule is 1.65 cents per therm. Since the effective date of this rate schedule, we have made applications to Panhandle for service thereunder. I have copies of those applications with me, (producing documents).

(Documents marked Exhibit No. 18, pages 1 to 12 inclusive.)

Mr. Dyer: This exhibit consist of copies of letters addressed to the Panhandle Company, and replies from Panhandle. They all concern one transaction, and they are offered as one exhibit.

[fol. 216] (Witness continues): On November 16 I made application for gas under Rate Schedule RD-2 for resale to industrial customers, addressing the application to the Panhandle Eastern Pipe Line Company, directed to the attention of Mr. E. Buddrus, president of the company. These applications were made separately, and labelled, Application No. 1, Application No. 2, Application No. 3, and Application No. 4. The applications are found on pages 4, 5, 6 and 7 of Exhibit No. 18. I followed on November 17 with five additional applications, addressed also to the Panhandle Eastern Pipe Line Company, to the attention of Mr. Buddrus. These applications were labelled Application No. 5, Application No. 6, Application No. 7, Application No. 8, and Application No. 9, and they are given respectively on pages 8, 9, 10, 11 and 12 of Exhibit 18.

Among those applications, there was an application covering the Ford Motor Company proposed contract. That is Application No. 4 on page 7 of Exhibit No. 18. That application is for 250,000 therms per day, or approximately 25,000,000 cubic feet per day. In response to those requests I had received no reply by December 5. These applications were made on November 16 and 17, 1945, and by December 5, 1945. I had received no reply, and I became concerned about the matter, and I wrote to Mr. Buddrus again, urging consideration of our application. That letter is on page 3 of Exhibit 18. I received a reply from Mr. Buddrus on December 8 in which he acknowledged receipt of the applications. In that letter, Mr. Buddrus requested certain information. I replied on December 14, 1945, and

gave that information. I have not heard anything about our application since then.

Mr. Dyer: I would like to introduce Exhibit No. 18 in evidence.

[fol. 217] Mr. Jennings: My only objection goes to the materiality of it, in view of the issues before the Commission.

Chairman McBrearty: When we are considering the question of the materiality of the exhibit, containing these letters, what is your contention, Mr. Dyer, as to why this correspondence is relevant to the issues that we have to decide here?

Mr. Dyer: Well, very briefly my point is this, that as a result of lengthy litigation, in which the City of Detroit was the moving party, the Federal Power Commission made an order to Panhandle Eastern Pipe Line Company to cut their rates; and in accordance with that order, which was finally approved in the United States Supreme Court, the Panhandle Eastern Pipe Line Company filed a schedule of rates—I may not have the dates exactly accurate, but I think it was in May of 1945. This was their first filing, in May of 1945. That was not satisfactory to the Commission, or apparently to the interested parties, and they were ordered later to file a new schedule of rates. A new schedule was filed, and there was objection to certain of those provisions, and a hearing was had before the Federal Power Commission in October, either September or October of 1945 and, as a result thereof, this new Schedule RD-2 was filed, becoming effective, I believe, November 2, 1945, providing, or giving to distributing companies who were purchasers of firm gas, the right to purchase these large quantities of interruptible gas, providing the Panhandle had that gas available.

During the time that all of these negotiations were going on with the Federal Power Commission, Panhandle was negotiating with the Ford Motor Company, and on October 22, signed this contract with the Ford Motor Company, giving them probably all the interruptible gas that Panhandle [fol. 218] had available. So the result would be that if the Ford Motor Company contract was sustained, this Schedule RD-2 would mean nothing, because Panhandle would have no gas available.

For that reason I think it is material to show the history



of these transactions, in order that the Commission may understand what the situation is now, and what has actually transpired.

Mr. Williams: Mr. Chairman, may I say that generally I feel that control of the proceedings is in the hands of the parties here, that is, the complainant and the defendant; but I do not wish by my silence to have a record made and issues proposed that are not within the scope of these proceedings.

Now, my view of this complaint is that the Panhandle Eastern is doing certain things without having complied with the law; and I feel that any fact that goes to substantiate that conclusion would be material. I do not understand that it is necessary for the Michigan Consolidated Gas Company to undertake the burden of establishing present ability on its part to perform the contemplated service which the Panhandle is proposing. In other words, these are not a proceedings for a certificate initiated by Panhandle, where they are establishing a lack of facilities on the part of the companies presently serving the territory. If that were true, then I might see the materiality of proof establishing present ability on the part of the local distributing company. But, I do not believe that is an issue in these proceedings.

I believe the issue in these proceedings is, what is Panhandle doing, and if she is doing certain things, whether or not she should be required to meet certain lawful conditions.

[fol. 219] While I am not objecting to the receipt of this testimony, I am trying to have the record indicate that by my silence, I am not acquiescing in a broadening of the issues.

Mr. Dyer: I might say further, Mr. Chairman, that it is our contention that under our contract with Panhandle, and further under the new rate schedules filed, that we are entitled to purchase this gas from Panhandle. If Panhandle is allowed to come in here and sell this gas direct to industry along the lines, as we believe, of a well-declared policy, they are not fulfilling their obligations as sellers of gas under contract to the Michigan Consolidated Gas Company. It is creating a direct effect upon the consuming public in the City of Detroit, if we are denied our rights under rate schedules and contracts.

The fact of the Ford Motor Company contract may mean that we will not have available the gas that we claim we are entitled to, with corresponding reaction unfavorable upon the consuming public in the City of Detroit.

These communications since November 1, when this rate schedule became effective, are indicative in my mind of the fact that Panhandle does not intend to recognize its obligations, with the result that the public of this state will be most detrimentally affected.

I think that is all proper for the Commission to consider under the broad language of our complaint, which is that the Commission investigate as to the policies of Panhandle in the state of Michigan, and determine whether the Ford Motor Company contract is one step in the carrying out of those policies.

Chairman McBrearty: What I am trying to figure out in my own mind is where we step in, and where the Federal [fol. 220] Power steps out, or vice versa. In other words, I do not know how much of this should be reviewed by the Federal Power Commission, and how much should be reviewed by this Commission. Some of these things that you speak of, if it is an infringement, or, if it is a violation of the rate schedule promulgated by the Federal Power Commission, it seems to me that that body should be addressed on the violation, rather than us.

Mr. Dyer: I agree with you there, Mr. Chairman.

Chairman McBrearty: Now, to get to the point of this, in a broad investigation such as this hearing is, I presume that we can look into a lot of things that could be very technical, someone could say that they are material, but I cannot see for my sake how this is going to help us decide the issues involved here which, as nearly as I can tell, are whether or not Panhandle Eastern Pipe Line Company is subjected to the jurisdiction of this Commission by the acts that they have engaged in. If they are engaging in unlawful acts in this state, we, as a regulatory body, have some control over them.

Now, they claim that this is all interstate commerce, and, consequently, they are not a distributing company, and as such we have no control over them.

I also know that they say that the Federal Power Commission has no control over them, because the Natural Gas Act does not give the Federal Power Commission jurisdiction over direct sales.

To get down to the point, I do not see how this correspondence is going to help us decide the fundamental issue here.

Mr. Dyer: Well, to my mind, it certainly ties up with the Ford contract. It seems to me that they are indicative of the intent of the Panhandle Eastern in making the Ford contract, and whether that contract constitutes the doing [fol. 221] of local business in the State of Michigan, or is in interstate commerce, is the issue that this Commission is going to have to decide; and it does seem to me that this is pertinent, not because we claim there has been any violation, but as showing the intent, perhaps, of Panhandle in coming in and making the Ford contract.

Chairman McBrearty: Well, let us do it this way, then: We will accept the exhibits, and if the Commission feels that these exhibits will help them to decide the ultimate issue here, that is for the Commission to determine. I would much rather have a great deal of exhibits in the record that would be helpful, than to restrict the record down to a narrow field where you just have to pass on that, and that only. I think the Commission has the right, this is not a jury, and we can separate the wheat from the chaff, and if we do not want to give consideration to these exhibits, it is for the Commission to determine.

We will accept Exhibit 18 for what it is worth.

Mr. Williams: Mr. Chairman, may it appear on the record that our position is that, not that we have any jurisdiction or control over capacity as such. I portend that it will ultimately be determined that the capacity of this interstate line is a Federal question, and the ability of these parties to do what they undertake is, in my opinion, not before us. The question is whether or not what they propose to do, and what they have been doing, is of such character as to be subject to regulation, regardless of whether or not it is intrastate business, or interstate business.

Commissioner Shilson: Would the gas being sold to the Ford Motor Company under the contract that has been executed, as I understand it, yield more to the Panhandle [fol. 222] Pipe Line Company than the purchase by your company of similar gas?

A. It would yield more to the pipe line company.

Mr. Williams: Which, by selling direct to Ford, or by selling to you and allowing you to sell it to them?

A. It would yield more to the Pipe Line by selling direct



to Ford than it would yield to the Pipe Line by selling to us, and our selling to Ford:

Commissioner Shilson: I understand.

(Witness continues): In other words, the schedule price is 1.65 cents per therm, in Schedule RD-2. Under the Ford contract, Exhibits 16 and 17 show the cost.

Mr. Williams: My understanding of Exhibit 16 is that it shows the difference between the cost to Ford, on the basis of the rates of the two companies.

Mr. Dyer: Well, what I understood the Commissioner desired to know was what the return to Panhandle would be, whether it would be more under the Ford contract, or more if they sold under this interruptible schedule to the Gas Company.

Mr. Williams: That is right.

Mr. Dyer: Now, Schedule RD-2 calls for a rate of 1.65 cents per therm. The Ford contract calls for a rate of 2.384 per therm, ranging up to 2.417 per therm, depending upon the amount of gas consumed.

Does that answer your question?

Commissioner Shilson: That is right. As I understand it, we are talking now about gas that no one has ever got.

Mr. Dyer: That is right.

Chairman McBrearty: Mr. Fink, you have not received a reply to your letter of December 14, 1945, asking for the Panhandle Eastern to furnish the amount of interruptible gas that you desire for industrial customers, is that right?

A. That is correct.

[fol. 223] Chairman McBrearty: And what have you done about that? Have you made any complaint to the Federal Power Commission?

A. No, we have not as yet.

Chairman McBrearty: Mr. Fink, were these exhibits offered to the Federal Power Commission on the show cause in connection with which Panhandle appeared before the Commission, the Federal Power Commission, on January 7?

A. Yes, sir, they were all offered. They are there.

Chairman McBrearty: Well, then, your last answer—apparently you have advised the Federal Power Commission, because if these were offered in evidence down there, then that situation is before the Federal Power Commission?

A. I did not understand your question in that fashion.

As I understood you, you meant we had made application, for example, under the provision in the Natural Gas Act.

Chairman McBrearty: No; my question, Mr. Fink, was had you complained about the failure of Panhandle Eastern to comply with this rate schedule RD-2?

A. Let me answer it in this way, not except in so far as our complaint to the Commission was concerned, and the introduction of that evidence.

Mr. Williams: The entire Ford transaction has been placed by you before the Federal Power Commission upon your complaint, has it not?

A. That is correct.

Chairman McBrearty: Then you have done it formally, you have put this exhibit before the Federal Power Commission.

[fol. 224] Cross-Examination

By Mr. Jennings:

We could describe the service of gas to the public as having peaks and valleys. When we entered into a contract with Panhandle to buy a maximum of 125,000,000 cubic feet a day, that was to take care of the peak requirements at that time, at the time the contract was made. In Michigan, the climate determines the peak to the largest degree of any other factor. So, both from our viewpoint, and the viewpoint of our source of supply, we would anticipate the peak during the winter months, and a valley during the summer months. Each would have to make their plans with that sort of experience in mind. When we set the maximum at 125,000,000 cubic feet firm gas, we not only considered peak periods due to climate, but also due to an expansion of the use of gas facilities for heating purposes.

The outlook in the immediate future, is that we will have a greater use for firm gas. With the increase of home building programs that we hear about, we would anticipate that we would get our share of customers out of that group. During the cold months, we would just about use the peak capacity on our contract now on the peak days of the cold weather. We have not as yet had a period of a month of steady cold weather. We haven't had more than possibly four or five days of continued usage in excess of that peak. We have had our maximum days this winter. I can't say

how many peak days we might have, but I would judge there might be possibly all told during the peak months, say from December to the end of March, that there possibly might be some thirty days on which that maximum might be exceeded.

[fol. 225] In entering into a contract with Ford, we would expect to have to use the interruptible clause a considerable number of days during the winter months. Under the rate schedule now prevailing, we would expect to get the interruptible supply from the Pipe Line Company, and we would not be interrupted any more than the Pipe Line Company would interrupt its other industrial customers.

Q. Let us talk about conditions as they are now established.

A. By that, you mean Panhandle declining to give us the interruptible gas?

Q. Just the way things set now.

A. Panhandle declining to give us interruptible gas?

Q. Well, I don't know as they have declined, but you are not getting interruptible gas in the way that you would like to have it, perhaps?

A. Yes, that is true.

Q. Now, by the use of industrial contracts, with interruptible clauses, you would expect to smooth out the valleys during the months when you don't use so much gas for heating purposes?

A. That is true.

Q. So what you are attempting to achieve is a level rather than peaks and valleys?

A. Well, it would have that general result.

Q. And that, of course, would upset to some degree the experience of your source of supply, if you established a level?

A. Well, I do not know that I quite understand your question.

Q. Well, a few minutes ago I mentioned that your experience with peaks and valleys would be duplicated by your sources of supply, they would have peaks and valleys in the same degree as you would?

[fol. 226] A. Provided there was a limitation on interruptible sales, summer sales; but as to whether that gas would be sold through the Michigan Consolidated Gas Company, or through Panhandle direct, there would be no



difference. The effect on the Panhandle line, if that is your question, would be the same as to whether we handle this gas, or whether Panhandle handled it directly.

Q. I guess we are not quite together on the question. I am having in mind now that your maximum limit is 125,000,000 cubic feet, which is firm, as far as Panhandle is concerned?

A. That is the limit on the firm gas, yes.

Q. But you have peaks and valleys on that amount of gas?

A. Yes, within that firm?

Q. Within that firm?

A. That is right.

Q. And that also causes peaks and valleys in your source of supply?

A. Yes.

Q. But if you level out, it is going to level out to some degree the peaks and valleys of your source of supply?

A. That is correct.

Q. Yes. Now, if you have an industrial contract on an interruptible basis, that in some degree gives you a reserve, protects the home, the household, I speak of the householder. I mean all of your firm contracts, space heating contract?

A. Well, I don't know that it could be called a reserve. For instance, we are entitled to 125,000,000 feet of firm gas throughout the summer.

Q. I understand.

[fol. 227] A. We are entitled to it throughout the 365 days in the year, summer or winter; but having a firm load that is under the 125,000,000 during certain times, certain days of the year, makes that gas, that capacity available for interruptible service to industrial customers?

Q. Yes, that is as far as you are concerned?

A. That is correct.

Q. If your expected requirements were 100,000,000 cubic feet, and you had a contract on an interruptible basis for 25,000,000 cubic feet, then on an unexpectedly cold day, you could draw on that extra 25,000,000 couldn't you, you could call on that?

A. Well, it would be 25,000,000 which would be interruptible to industrial customers, and it would become available for firm gas.

Q. That would be made available for your firm users?

A. That is right.

Q. Now, when did you first learn about the contract between Ford and Panhandle?

A. I do not remember the exact date. Really, the first knowledge I had of the existence of a contract was when I learned that a copy had been filed in the Ingham County Court. That was the first information I had, authentic, that there was a contract. The earlier information that we had on this came to us through—that is, the earlier information of any intention by Ford Motor Company to draw gas from Panhandle came to use through contractors about the city.

(Witness continues): We filed our complaint, which is now before the Commission, on December 18, as I recall. The Ingham County Circuit Court case was not started until January. We knew that there was an intention by Ford Motor Company to draw gas directly from Panhandle, or, [fol. 228] to put it the other way around, by Panhandle to sell directly to Ford, from information that came to us that a line, the construction of a line had been contemplated. But we had no definite information as to the existence of a contract.

When we learned of this, we immediately began to make an investigation to find out what the facts were. I immediately dispatched Mr. Clark and Mr. Kreuz to see the Ford Motor Company, but they failed to learn from Ford Motor Company that there was a contract. The receipt of this information had no bearing on the writing of the letters to Mr. Buddrus. We were prompted to write the letters, because we are entitled under the new rate schedule, we are entitled to purchase gas, interruptible gas from the Panhandle at 1.65 cents per therm rate for industrial customers who can use interruptible gas, and who have standby for it. We wrote the letters just as soon as we were informed of this rate, just as soon as we had information, and had a copy of the official rate schedule in our hands; immediately upon receipt of a copy of the official rate schedule, as ordered by the Federal Power Commission, on November 2, we proceeded to prepare and write these letters. The first letter is dated November 16. On that date we had some information that Ford was dealing with Panhandle. I do not remember the exact date when we first had knowledge that there was an intention of direct sale.

The old contract also had this interruptible clause, that is, it had a provision for the purchase of gas for a special industrial customer, or customers, but there was no rate fixed. In other words, there was a provision there for the negotiation of purchase of interruptible gas, but the provisions there were not as definite as they are under this present rate schedule.

[fol. 229] Q. Now, in view of the factors that we have been questioning and answering, you cannot be sure that you could fulfill a contract to Ford's expectancy, without having taken advantage of that interruptible feature in the rate schedule in the contract?

Mr. Williams: Now, just a minute. Is it understood that all of these questions are coming in because of the admission of Exhibit 18, subject to my objection, as to the scope of the proceedings?

Mr. Dyer: That is agreeable.

By Mr. Jennings (continuing):

Q. Now, when you were down at Washington, I do not know whether it was the formal hearing, but some character of hearing before the Federal Power Commission, you testified to the effect that the Michigan Consolidated Gas Company was only interested in its present allowance of 125,000,000 cubic feet, didn't you?

A. That had reference to the rate schedule then existing, and it had reference to firm gas. That testimony was given before rate schedules GD-1 and RD-2 were ordered by the Federal Power Commission. Rate Schedule RD-2 gave the Michigan Consolidated Gas Company the right to purchase interruptible gas from the Pipe Line, interruptible gas in excess of 125,000,000 cubic feet per day of firm gas, as provided by the contract existing at the time the testimony was given.

Q. Didn't you actually say that you were not interested in any additional commitments from Panhandle?

A. I testified as to the additional firm gas of 125,000,000 cubic feet per day.

Chairman McBrearty: So that the record will be clear, it does not appear so by your questions, Mr. Jennings. The testimony that you gave, Mr. Fink, was in the Panhandle export case?



[fol. 230] A. That is right.

Chairman McBrearty: The attempt by Panhandle to export gas to Canada?

A. That is correct.

Chairman McBrearty: Which was objected to by your company, and objected to by the Commission—no, your company did not object to it.

Mr. Williams: They were not parties to that proceeding.

A. We were subpoenaed as witnesses.

Chairman McBrearty: The Michigan Public Service Commission objected to it.

A. That is right.

Chairman McBrearty: And that hearing was held before November 2, 1945, wasn't it?

A. That is correct.

Chairman McBrearty: Now, November 2, 1945, was the date that this new rate schedule went into effect?

A. That is correct. That is the date on which the new rate schedule was ordered. It actually went into effect, its practical application made it become effective on all gas we purchased in the month of October. That was the practical result of it.

Chairman McBrearty: Now, when was the export case, so that we will know what we are talking about?

A. I do not remember what that date was, but I think it was early in October, as I recall, sometime prior to the Commission's order of November 2, establishing the new rate schedule.

Mr. Williams: You testified in those proceedings, under subpoena, as a witness of the City of Detroit?

A. That is correct.

By Mr. Jennings (continuing):

Q. Now, all of your activity, commencing with the letters representing Exhibit 18, was to put you into a position so [fol. 231] that you could enter into a contract with Ford to give them a sizeable quantity of gas, is that right?

A. By "Activity" do you have reference--?

Q. To this series of letters.

A. Well, they cover nine industrial customers, eight in addition to Ford Motor Company, and they cover gas contracted for with the industry, dates of contracts all preceding, as far as I recall, the date of the contract between the

Ford Motor Company and the Panhandle Eastern Pipe Line Company.

Q. Now, with reference to these eight, which eliminates Ford, in your judgment, you feel that you should have an arrangement with Panhandle for an interruptible supply, so as to take care of these eight, as well as the space heaters?

A. Absolutely. We want those contracts because we are entitled to them, and we want the rate.

Q. And if you took out Ford, which, as has been testified, may require 63,000,000 cubic feet a day, you would have to have more gas than even if those eight are only considered?

A. Well, we have a provision in here in these applications for 25,000,000 a day for Ford.

Q. Well, that would be the total for Ford, which is inclusive of the 15,000,000 that you have contracted for?

A. No, that would be exclusive.

Q. So that would be 40,000,000 for Ford?

A. With the provision in here, it is for 25,000,000 a day. Our request to Panhandle in these applications is for 25,000,000 cubic feet a day for the Ford Motor Company.

Q. Well—

A. Application No. 4.

Q. Is that the total that you would supply to Ford under that application?

[fol. 232] A. Well, that would be the total under this application. Of course, we would expect to make application for additional gas as the Ford Motor Company's need might increase, which would apply not only to the Ford Motor Company, but also to all other industries in our territory.

Q. Now, are these eight contracts all on an interruptible basis?

A. That is right.

Q. And Ford would be on an interruptible basis?

A. That is right.

Q. If down the line Panhandle would have such a peak that it would have to decree a uniform interruption, would you go along with them on that?

A. Oh, yes.

Q. If you were still within your limit of 125,000,000 cubic feet?

A. Well, purchasing gas under this interruptible rate schedule is outside of the pale of 125,000,000 cubic feet, and any interruptions ordered by the Pipe Line, of course,







would have no reference whatsoever to firm deliveries, but they have reference to the customer, to the specific customer to whom the interruptible contract applies. As I recall it, these applications are made for specific individuals, industries, and when—

Q. (Interrupting: But within the 125,000,000 cubic feet a day, you would not interrupt, if Panhandle found it necessary to interrupt contracts along the line?

A. We would have no choice in the matter. We would be under contract with Panhandle to interrupt that specific customer.

Q. I think you are talking about if you come in under this new rate schedule?

A. That is correct.

[fol. 233] Q. But I am not talking about that. I am talking about the situation where you have a firm contract with Panhandle for 125,000,000? So you would not comply with a request to interrupt as long as you had not exceeded your 125,000,000 under your contract?

A. Well, purchasing gas under the firm commitment with Panhandle, Panhandle has no right to ask us for any interruption.

Q. And you would just hold them to it?

A. Well, certainly. If we have the customer there, we would just sell to the customer. We are paying the firm rate, and we are entitled to firm deliveries.

Mr. Jennings: That is all.

Redirect examination.

By Mr. Dyer:

Under the new schedule, interruptible gas is purchased for specific customers, and when an interruption is ordered under that schedule, when an interruption is ordered by the Pipe Line Company, it applies to those specific customers. It has no relationship whatsoever to our firm gas and they would be interrupted, whether we took our 125,000,000 firm that day, or less.

Cross-examination.

By Mr. Williams:

There is a difference in the price on the schedule to be paid for interruptible gas and for firm gas. The firm gas

is higher. The firm gas prices under the rate schedule that was ordered on November 2, 1945, are what is known as a good load factor-poor load factor rate. The base rate which is a good load factor rate on firm gas is 1.85 cents per therm; and the so-called poor load factor rate is 2.06 cents per therm of firm gas. The interruptible rate, that is, the [fol. 234] rate of gas purchased, or, let us say, sold by Panhandle on the interruptible basis is 1.65 cents per therm. So there is a difference in rate of two-tenths cents per therm of the interruptible rate and the firm—the lowest firm rate, which is the good load factor rate. As far as I know, there is no justification for the difference, other than the fact that the interruptible gas is interruptible. That is the reason for the low rate.

Mr. Williams: I have no further questions at this time.

Mr. Dyer: Those are all the witnesses, Mr. Chairman, that we have here today.

Mr. Jennings: I would like to put on some of our witnesses, so that they can be excused.

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NEWKIRK, DAN L., was thereupon called as a witness on behalf of the Panhandle Eastern Pipe Line Company, and having been first duly sworn by the Chairman to tell the truth, the whole truth and nothing but the truth, testified as follows:

Direct examination.

By Mr. Jennings:

I am employed by Ford Motor Company as superintendent of blast furnaces and coke ovens. There came a time when I felt that there would be a need for more natural gas than the 15,000,000 cubic feet a day the contract called for. I began to look into that feature of the situation, from 1942 on. There had been several meetings and conversations between the Gas Company engineers, and the Ford Motor engineers, as to the contract wordings and rate adjustments in this matter. By "Gas Company" I mean the Michigan [fol. 235] Consolidated Gas Company. In the spring or summer of 1944, we had a meeting in the office of H. T. Hanson, plant engineer of the Ford Motor Company, attended by Mr. Hanson, Mr. Clark, Mr. Snyder, Mr. Jennings,



and myself. At that meeting we asked for 25,000,000 feet of natural gas per day.

The Michigan Consolidated Gas Company men that were present told us that they could only give us 15,000,000 cubic feet per day. That did not end negotiations with the Michigan Consolidated for more gas. That statement was modified by further statements to the effect that when, after the war, the Michigan Consolidated Gas Company constructed a new line to this region and pressured the Michigan wells, that they would have available all the gas that we asked for. I understood it was contingent upon their construction of lines to the gas fields. I am not aware of all of the approaches that were made by the company through the various departments about getting this extra supply. I am an operator. I did not approach any other company that had a supply of gas. It was done by someone else connected with our company.

Mr. Jennings: Cross-examine.

Cross-examination.

By Mr. Dyer:

I have been superintendent of blast furnaces since 1920, and superintendent of coke ovens since 1932. The conference in the office with Mr. Hanson was some time in the spring or summer of 1944. I would not say it was in April. I would not say whether it was April or May. Besides Mr. Hanson, Mr. Clark was present. He is industrial engineer of the Michigan Consolidated Gas Company, the man who [fol. 236] testified here today. I also mentioned a Mr. Snyder, who is an official of the Michigan Consolidated Gas Company, and Mr. Jennens who is one of the plant engineers, in the engineering department of the Ford Motor Company. The three Ford Motor Company men all asked if the Gas Company could supply 25,000,000 cubic feet a day of interruptible gas. We were contemplating an increased use in gas at that time because we had made studies, surveys on the possibility of using natural gas in the Rouge plant, in place of coal gas, in general for metallurgical purposes, heat-treat furnaces, which are necessary in the manufacture of automobile parts, and reheating furnaces, which are used in the rolling mills, and glass tanks which are used in the glass plant. Both Mr. Snyder and Mr. Clark replied

for the Gas Company. They both said the same thing that at that time they could not supply us in excess of 15,000,000 for the reason that they had contracted for 10,000,000 with Great Lakes shortly previous to that time. They did not mention Great Lakes. They said another customer. I found out later that it was Great Lakes that they had been contracting. No mention was made of Great Lakes in the conversation. I knew at the time of the conversation that they had contracted with Great Lakes, only by conversations between myself and other operators. I had heard the gossip that the Gas Company had contracted with Great Lakes for 10,000,000.

After this conference in the spring or early summer of 1944, it seems to me that we had further conferences with Gas Company officials regarding a supply of gas. I rather have forgotten, but it seems to me that we did. All I remember is being present at some meetings of Gas Company officials and our engineers, in case my knowledge was desired. I do not recall what was discussed at those meetings [fol. 237] —not in detail. So far as I know, I could not swear that the Michigan Consolidated Gas Company had been asked at any time since the spring of 1944 as to how much gas they could supply. To my mind, it was definitely established in the spring of 1944 that 15,000,000 was the limit. That is just about all that I can testify to on that point. In 1942, I know Ford Motor Company was purchasing 15,000,000 cubic feet of gas from the Michigan Consolidated Gas Company. We were not taking 15,000,000 every day. We took three or four and five and six million, sometimes eight. We never reached 15,000,000. From 1944 to date, we have never reached 15,000,000 or come anywhere close to it.

Q. So whether they could have supplied you with 10,000,000 more would not have made any difference during the period that has passed, would it?

A. Yes, it would.

Q. In what way?

A. Our plants contemplated the use of 25,000,000, to supply the requirements of the Rouge plant, and our piping layouts and designs were based on 25,000,000, with the coal gas entirely being diverted to other uses.

We laid out a scheme in which the pressure of the natural gas would not require the use of our compressors, and we did not anticipate that at any time the natural gas that we

used in the Rouge plant during the times of uninterrupted, that any coal gas would be used in the Rouge plant, nor would any compressors be operated.

We based our picture on 25,000,000 feet of natural gas, which was sweet and free of sulphur and other objectionable ingredients.

Q. Well, in April of 1944, or in May of 1944, at the time of this conversation, was your plant there equipped so that you could use 25,000,000 cubic feet a day?

[fol. 238] A. No, sir. When we found out that we could not get it, we slowed up on our construction of gas mains, and we patiently waited the time when we could get the twenty-five, at which time we contemplated going ahead with our plans.

Q. That is, you say you patiently waited. Did you patiently wait?

A. No. I continually hammered at the engineering department and other officials to get gas in the plant.

Q. But you did not say anything further to the Gas Company about it?

A. Not I.

Q. Well, during the war, Mr. Newkirk, the take of the Ford Motor Company was limited, wasn't it, by the Federal government?

A. 9,000,000.

Q. It was limited to 9,000,000?

A. Yes, sir.

Q. So that during that period, it would have made no difference whether you could have got your 25,000,000, or not?

A. That is right.

Mr. Dyer: That is all.

Mr. Jennings: That is all.

Cross-examination.

By Mr. Williams:

During the war period, the distribution of natural gas throughout the country was regulated by the Federal government, they made certain orders as to where the gas should be taken by the distributing companies. At one time they allowed us to take—they made an order to take



our limit, as I recall it, because of the special work that we were doing, which otherwise would have been shut down. [fol. 239] By Mr. Dyer: When you say that we were allowed to take the limit, I believe it was 9,000,000. I know at one time there we made application to the Gas Company people, and we were allowed to take more than the curtailment indicated, because of certain essential work that we were doing. These were for very short periods, a day or such matter.

Mr. Williams: Mr. Chairman, I feel that perhaps our position on the record is clear, but still, on the chance that some later use may be made of the fact that I am not objecting to this type of testimony, it seems to me utterly immaterial as to whether or not the Michigan Consolidated Gas Company could or could not supply gas in 1944.

If there is an inadequacy of service on the part of the Michigan Consolidated Gas Company, or an inadequacy of facilities on their part, then there is a legal remedy to be used to remedy that situation, and I do not feel that those points are material in these proceedings.

Chairman McBrearty: Well, counsel has the right to put in such testimony as he thinks is relevant to his position in this case, and we have no desire to limit the scope of the proof.

(Thereupon an adjournment was taken until Friday, February 15, 1946, at 9:30 o'clock A.M., at the same place.)

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[fol. 240] Friday, February 15, 1946, 10:30 o'clock A. M.

The hearing of this cause was resumed pursuant to the adjournment.

FINK, HENRY, was thereupon recalled as a witness herein, and having been previously sworn, testified further as follows:

Redirect examination.

By Mr. Dyer:

I am familiar with the provision in the Panhandle contract, of 1935, with respect to building up sales of gas in

the City of Detroit. That provision is Paragraph 6 of Article XIX. It reads:

"The buyer will adopt and use schedules and forms of rates which will in its judgment tend to stimulate sales of natural gas for domestic, industrial and commercial purposes, and for house heating. Buyer will make every reasonable effort to increase and build up the sales of natural gas throughout its gas distribution system, and seller will cooperate with buyer in accomplishing this result. Buyer agrees to make such reasonable extensions to its distribution system as would be susceptible of earning a reasonable return on the investment."

We have made an effort to comply with those provisions. In 1935, at the time this contract was entered into we had about 638 industrial customers, approximately. Their gas [fol. 241] consumption in 1935 was 25,350,000 therms. We were serving 1873 industrial customers in 1945. Their gas consumption in 1945 was 90,055,000 therms. The natural gas pipe line came in in the latter part of 1936. Our industrial consumption in 1935 was 25,000,000; in 1936 it was 32,000,000. These developments have taken place since natural gas came in. We were on 100 per cent natural gas after November, 1936.

Chairman McBrearty: Well, this provision of the contract which says that you will try to stimulate the sale of industrial gas, and will make every effort towards building up industrial sales, and the seller will cooperate in that direction, that was made in 1935, that contract?

A. Yes, but the sale of natural gas began in 1936.

Mr. Williams: That was the change-over. So we take the sale of industrial gas, before natural gas came in, and then we have the sale of natural gas today—the sale of industrial gas today.

Chairman McBrearty: In other words, you made a contract on something you were going to do before the natural gas came in, is that it? I assume you are referring to a contract between the Michigan Consolidated Gas Company and the Panhandle Eastern Pipe Line Company, although you have not said it.

A. Yes. The gas contract between the Panhandle Eastern Pipe Line Company and the Detroit City Gas Company,

the predecessor of the Michigan Consolidated Gas Company, is dated August 31, 1935.

Chairman McBrearty: In other words, you were manufacturing 25,000,000 therms of gas for industrial use in 1935, and last year you bought and sold 99,000,000 therms for industrial use?

A. 90,055,000, in 1945.

Chairman McBrearty: All right.

(Witness continues): If you want a comparison between the first full year of natural gas, which would be 1937, and [fol. 242] 1945, I have the figures here. It is 45,671,000, for 1937, the industrial gas used in the first full year of natural gas. The consumption of industrial gas in 1943 was 102½ million therms. That was our largest year of industrial gas use. The space heating sales in 1935 were 1,068,000. In 1937, 17,483,000. In 1945, 85,700,000.

All of these figures are in therms.

The residential sales in 1935 were 73,246,000. In 1937, 81,043,000. In 1945, 110,987,000. In 1935, the sales to commercial customers were 10,574,000. In 1937, 13,024,000. In 1945, 20,243,000. The total sales in therms to all classes of customers for the same three years were, in 1935, 110,239,000. In 1937, 157,222,000. In 1945, 306,989,000.

I have made a study of what the effect would be upon the revenues of the company if you deducted the entire large industrial sales. The sales revenue of industrial gas during 1945 was \$4,854,000; and the purchase price, or, the cost of that gas to us was \$1,729,000. So there is a spread of \$3,125,000 of revenue, or, rather, that is the spread from sales of our industrial gas. This cost is based upon the present rate schedule. That is the figure which would have resulted if the present rate schedule had been in effect during the year 1945. When I said large industrial customers, I was talking about the customers on the large volume rate in our rate schedule, the 1873 that I mentioned. These 1873 customers bought \$4,854,000 worth of natural gas from us which cost us \$1,729,000. Our fear is that if the Panhandle Eastern moves in they will take away that income from us, —from our gross revenue. This loss would be really in effect actually the loss from the net earnings, in that no capital investment could be retired, or no appreciable amount of capital investment could be retired as a result of this loss of business.



[fol. 243] The industries are fed from the common system of mains which supply all customers. The only portion of the company's capital investment that could be retired upon the loss of part or all of this business would be that which is installed in the way of industrial metering and regulating capacity on the industrial customer's premises, and that is a very small amount. It is approximately \$250,000. That would cover the investment that could be retired if we were to lose this business. Practically no savings in operating expense could be made if this industrial business was lost. There would be the matter of meter reading, which is an infinitesimally small amount, a relatively small amount, and then some industrial personnel, possibly, but it is a very small amount. I would say that it would probably not exceed \$15,000 or \$20,000 a year, something like that.

Our additions in distribution capacity, which is practically all of the increase in the investment required to handle the additional business since 1935, or since the coming in of natural gas, has amounted to a total of approximately seven and one-half million dollars. That is our total capital additions in order to take care of this increased business, for all classes of customers. That is, in main construction, but that does not include service pipe construction to domestic service, domestic customers. That investment is in distribution mains, transmission and distribution mains. No part of that expenditure in distribution mains could be retired if we lost our industrial business.

Re-cross examination.

By Mr. Jennings:

When we were able to get natural gas, I believe we made some reduction in rates at that time. Natural gas is much [fol. 244] cheaper than manufactured gas. As a result, there would be some increase in residential use, because of the economy in natural gas, as compared to manufactured gas, although, as I recall, our reduction in the rates at the time the natural gas came here was not sufficient to produce this increase. Recently in the ten year period I have been talking about, there has been a very substantial decrease in rates. That was last year, but before last year, I would not say a substantial decrease. There was

some decrease as compared with the manufactured gas rate.

Among the 1873 industrial customers, I include the present existing Ford contract. I testified yesterday we are furnishing Ford now at a lesser price than Panhandle proposed to furnish it. Many of these 1873 customers are on a firm rate; they are not on a similar rate; they are not on an interruptible rate. We have about twelve customers now under the interruptible rate. They are users of gas of anywhere from one to five million feet a day, or seven million feet a day. I mean, that is their past use. Their expected use is materially larger. Now, as to those users, based on the rates that Panhandle proposes to charge Ford, we could outbid them on a lower rate, that is, if we are bidding on the same terms, if we are bidding on a completely interruptible gas. I mean, the contract would provide for complete and actual interruption, no maintenance of any gas for the saving of equipment, or maintaining production. I do not know the terms of the two contracts of direct sales that Panhandle has in Michigan. I do not know the terms of any of the 27 and odd industrial customers they have throughout the line. I do not know that as to Panhandle's proposed contract with Ford for proposed sales, that there is no intention of taking away from us our 15,000,000 contract. I have not read it in the con-[fol. 245] tract. I am making the assumption that Panhandle might compete with us as to these industrial customers on the basis of statements made by representatives of the Panhandle Eastern, of their intention.

Q. What company did they state they would take away from you entirely?

A. Well, Mr. Butler stated to me in a meeting I had with him in New York on June 22 last year, that he had in mind Michigan Steel and Ford and Monsanto, and, in fact, any consumer that would use more than—or, would use as much as 1,200,000 therms.

Q. Do you have contracts with these others besides—aside from Ford?

A. Yes.

Q. Did he say that he would eliminate your furnishing entirely that gas?

A. No, he did not say so specifically, but he did say that unless we could come to some agreement with him

whereby we willingly would—whereby we would consent to their going in and taking them, that they would probably have to do it by force.

Q. If they used the procedure that they proposed to use with Ford, by letting you furnish 15,000,000, then that would greatly allay your fear, would it not?

A. No, it would not. We would still be deprived of revenue that we are entitled to in our situation in this area.

Q. To get that revenue, now, you would have to make arrangements with Panhandle to get more interruptible gas?

A. This present contract between Panhandle and the Ford Motor Company would deprive us, the Michigan Consolidated Gas Company, of gross business amounting to \$1,600,000 a year.

[fol. 246] Q. Provided you could furnish the gas?

A. That is correct.

Q. And you might not be able to furnish it under your present contract as to quantities, with Panhandle?

A. We think we can. I think we can. We can furnish that amount of gas to the Ford Motor Company without making any capital expenditures.

Q. You do not expect—

A. Or without increasing any of our operating expenses.

Q. Do you expect to have your residence use increased?

A. Well, it will increase, of course.

Q. Do you expect to have your space heating increased?

A. Yes.

Q. Do you expect to have your commercial increased?

A. That is true.

Q. Do you expect to have your industrial increased?

A. That is true.

Q. And then with all those increases, and furnishing 15,000,000 to Ford, you expect to do it within your 125,000,000.

A. We expect to get an increased supply to gas from another source.

Q. Well, then, your whole theory is based upon an expected increase of your supply?

A. That is right.

Mr. Jennings: That is all.



## Re-cross examination.

By Mr. Williams:

Q. I believe upon cross-examination that counsel asked you the reasons why you apprehended Panhandle's coming [fol. 247] into your market and taking industrial customers.

Did you have notice of any solicitation of your customers by the Panhandle Eastern Pipe Line Company?

A. No, we have not. We have had reason to believe, of course—we have had knowledge that they have industrial representatives in the city, and they have been active in visiting various industries, they have done that for years, and I believe are still doing it.

Q. Do you know what industries this representative of Panhandle has visited?

A. Well, I do not know personally. I think possibly we could produce some evidence to show some plants that they have visited.

Q. Well, returning to counsel's question upon cross-examination, as to the reasons for your apprehension, you did have knowledge of these solicitations personally, did you not?

A. Well, I did not personally see the representatives on the ground, but then I had knowledge that they have—that their representative, the industrial representatives were here, visiting industrial plants.

Q. And these plants are located in the Detroit district, so-called?

A. That is correct.

Q. And do you know whether or not this industrial representative called, for example, upon the Great Lakes Steel Company?

A. I have a memorandum here which—well, to answer your question directly, we do have information that in the time—at the time that we were negotiating with the Great Lakes Steel Company, Panhandle also at that time was negotiating with Michigan Steel.

Q. I am not sure that you understand my question. Now, counsel's question to you, as I understood it, was as to [fol. 248] what caused you to apprehend this? In other words, he was asking about the state or condition of your mind, as to what facts you had in your mind that caused you to apprehend anything. Now, don't let us get confused.

Not what you knew of personally, but what had been told you, or any other fact that you had that caused you to apprehend the loss of your business in this district?

Mr. Jennings: I object to any testimony of what was told him.

Mr. Williams: Well, now, you asked as to the condition of this witness' mind. I think it should be explored.

Mr. Jennings: I did not call for any hearsay, though.

Chairman McBrearty: This whole proceeding is founded upon complaints that the Michigan Consolidated Gas Company was apprehensive of losing a substantial part of its business, of Ford, among other things, and that this was part of the General policy of the Panhandle Eastern Pipe Line Company; and I think possibly, if I am not mistaken, counsel is attempting to develop by these questions how this gentleman, who is general manager and vice-president, first became apprehensive of the loss of that substantial part of his business, and I do not think that the hearsay rule should be enforced here absolutely. I am trying to get before the Commission the answers that are sought.

Mr. Williams: Before the Chairman rules I want to point out that there are exceptions to the hearsay rule. One of these exceptions is when the question asked relates to a condition of mind, or of motive, or any other factor, that has to do with a state or condition of the mind.

Now, I objected to this testimony coming in, but counsel continued to pursue it. Now, counsel on his questioning, [fol. 249] wanted to go into the state of mind, the state of Mr. Fink's mind, as to what caused him to apprehend the loss of this business.

Mr. Jennings: But you will note that I restricted it to statements made by representatives of Panhandle, which is very proper testimony. He cannot testify to a statement by John Jones; it may have been gossip; it may have been rumor, or any number of things.

Chairman McBrearty: The only way we can protect the record, as far as your client is concerned, Mr. Jennings, it seems to me is to hear the answer. If it is someone who is not connected with your client, or if it clearly comes within the hearsay rule, after we have heard the answer, we can make our decision, but until we hear the answer, I don't see how we can tell whether it comes within the hearsay rule.

Mr. Jennings: The question can be properly framed so that we will know whether it calls for hearsay, or calls for an admission.

Mr. Williams: I am merely going back to Mr. Jennings' question, and asking what factors he had in mind which caused him to apprehend the situation.

Chairman McBrearty: Well, stop right there. (To the witness): That is the question that is put to you.

A. May I read from a memorandum I have here, that was sent to me at the time of certain—at the time certain solicitations were being made by Panhandle?

Mr. Williams: If he had that knowledge prior to the time in question. In other words, I do not want you to create a condition of mind now. I am inquiring as to the same condition of mind that Mr. Jennings was inquiring about.

A. Well, this memorandum was sent to me in the early part of 1945.

[Vol. 250] Mr. Jennings: I think we have a right to know the source of this information, who sent the memorandum, and so forth.

Chairman McBrearty: I assume he is going to give us the source of the information.

A. I have this memorandum from Mr. Hale Clark, who sent it to me. He is in the room, and he can testify.

Chairman McBrearty: Now, just stick to that one question, what factors you had in mind that caused you to apprehend the situation, and forget anything about what Mr. Clark told you, or gave to you in the way of a written memorandum. What factors caused you to apprehend that you were going to lose this industrial business that you had had since 1935, or before that?

A. Statements by representatives of the Panhandle Eastern Pipe Line Company in the past several years, and their activities generally in the City of Detroit. At the time of the Town Hall meeting in the city of Detroit, there was a letter there by Mr. Maguire, president of the Panhandle Eastern Pipe Line Company at that time, or chairman of the Panhandle Eastern.

Chairman McBrearty: The Town Hall Meeting that you refer to was when? In February of 1945?

A. That is correct, in which an offer was made to serve the industry in the city, by running a belt line around the city of Detroit.



Mr. Williams: Service to be what company?

A. By Panhandle Eastern Pipe Line Company, and there was quite a detailed statement made of the manner of serving, based upon the condition of the city of Detroit, which would give Panhandle the right to lay pipes in the city streets. At that time a number of Panhandle's industrial representatives were quite active in visiting various industries in the city of Detroit.

[fol. 251] Chairman McBrearty: Now, what time are you referring to?

A. That was in February, March, April of 1945.

Chairman McBrearty: Were any statements made at this Town Hall Meeting—you are referring to a council meeting, aren't you?

A. That is correct.

Chairman McBrearty: Before the Common Council of the City of Detroit?

A. Yes.

Chairman McBrearty: Were any statements made by any representatives of Panhandle Eastern that they would sell gas industrially to Detroit users for less than you could sell it?

A. I don't remember that.

Chairman McBrearty: Made by either of them?

A. No, I don't.

Chairman McBrearty: Made by either Mr. Yost, Mr. Maguire, or Mr. Buddrus—I think the record will show that one of those three made such statements.

A. I believe there are transcripts of that meeting, and they can be produced, but I do not recall any statements made.

Mr. Williams: Well. I haven't the—

A. But we do have records of the dates of visits of Panhandle's industrial representatives to the various industries, and we can produce those, of course, from information gained from the industry itself.

Chairman McBrearty: Well, I do not think that this witness is limited to a strict application of the rule that you seek to have employed here, Mr. Jennings, in view of the last answers he has given.

Mr. Jennings: The danger is that a visit does not mean anything. There could be many reasons for Panhandle's

representatives visiting anyone using natural gas, to advise [fol. 252] as to the facilities, and so forth, and if there was a solicitation, it is very easy to bring the person here that solicited.

Chairman McBrearty: Aren't we getting a little bit far afield here?

What are you people brought in here for?

Mr. Jennings: We are here on a motion to dismiss.

Chairman McBrearty: No. What were you brought in here for in the first place, on what?

Mr. Jennings: To show cause why we should not cease and desist, on the Commission's order.

Chairman McBrearty: And why were you ordered to cease and desist, from doing what?

Mr. Jennings: From selling to the Ford Motor Company.

Mr. Williams: Well, we have the file here. Let us see what the order does show.

Chairman McBrearty: I have it here.

Now the first part of the complaint reads:

(Reading): "The Michigan Consolidated Gas Company alleges upon information and belief that for the purpose of furnishing such supply of natural gas, an 18-inch gas line approximately 6,000 feet in length is about to be constructed to transmit such gas from the present transmission line of the Panhandle Eastern Pipe Line Company to the point of consumption in the Ford plant, and that such 18-inch line will substantially duplicate and parallel the existing gas line through which Michigan Consolidated Gas Company is now supplying the Ford plant."

The proofs show up to this point that this is a line constructed by Ford, and not by us.

Chairman McBrearty: I appreciate that.

[fol. 253] Now, to get to the order itself, so that we can get back to the primary question here, what you people are in before this Commission on, the order asked you to appear before this Commission in the Hurley-Wright Building in Washington, D. C., to show cause why this Commission should not enter a cease and desist order for making direct sales of natural gas to the ultimate consumer within the state of Michigan, more especially in the territory being presently served by a public utility distributing natural

gas to the ultimate consumer, until such time as it shall have first obtained from this Commission a certificate of public convenience and necessity, and shall have otherwise complied with the applicable statutes of the state of Michigan, and with the relevant rules and regulations of this Commission concerning the distribution of natural gas to ultimate consumers.

Now, I had thought that during the course of this complaint—I mean, during the course of this hearing, that there would be some testimony to the effect that some part of this line—we knew ahead of time that most of it was being built by Ford, but I thought there would be some part of it along the way, where the line would show it had been built by the Panhandle Eastern Pipe Line Company. I had thought that that would be part of the proofs here. Whether that is necessary for us to assume jurisdiction is beside the point, because you are, in our opinion, acting as a public utility when you attempt to sell gas directly, and when you attempt to do that, you are doing something that is of concern to this Commission, because it is an intrastate business, and not an interstate business. So——

Mr. Jennings (interrupting): Well, assuming, but not admitting, of course, that you are entirely right, then what you propose to do is to interfere with property rights which, under certain circumstances, the Commission has a right [fol. 254] to do. But, in interfering with those property rights, there must be very direct proof as to the situation, rather than any hearsay or rumors or guesses, or anything of that sort.

There is nothing more valuable that needs protection by any regulatory body than property rights, whether it be the Michigan Consolidated Gas Company, or Panhandle, or whoever it is.

Mr. Williams: Mr. Chairman, counsel opened this subject up himself. He is the one that brought it into the proceedings, and being here, I think we have a right to explore it.

Mr. Jennings: Well, I only used the proper form of cross-examination on a matter that had been brought out by the Michigan Consolidated Gas Company.

Mr. Williams: There is no mistake more common than the idea that cross-examination gives some liberty that is not inherent to other kinds of examination. Cross-examina-



tion still has to be competent, still has to be material, and it has to be relevant to the subject.

Now, it has been opened up here by counsel, and I feel that we properly have a right to get all of the situation, and not merely give him the right to choose what small part of it he will bring in.

Chairman McBrearty: Well, let us continue, and then as objections are made, rulings can be had, rather than a general dissertation on the laws of evidence applicable to administrative bodies.

(Witness continues): I have in my hand a memorandum which recites the occasions of visits by Panhandle representatives. This happens to be a summary of the original memorandum. The original memorandum is dated somewhere about last March. The original was given to me and I familiarized myself with the contents. I read the memorandum [fol. 255] last March. I read it at the time it was sent to me. At that time I had knowledge of all that it contained. The memorandum was prepared by Mr. Clark who is here, the same Mr. Clark who has been on this witness stand. He is an industrial engineer of the Michigan Consolidated Gas Company and working under my supervision. It is a part of his duties to make reports to me. These reports are received by me in the usual course of business.

Q. What are the contents of this memorandum that were sent to you?

Mr. Jennings: I object to that. Very obviously this memorandum comes from a man who is available to testify, and it is self-serving, as far as information that is furnished to this witness.

Mr. Williams: This question goes to the state of the witness' mind, which was inquired about by counsel.

Mr. Jennings: He is asking for the contents of the memorandum.

Chairman McBrearty: I agree that counsel's position is right. Mr. Clark is here in the room, and what he said in that memo can be brought out by the witness himself, who would then be subject to cross-examination.

The objection is sustained.

Mr. Williams: I have no further questions.

Chairman McBrearty: Do you have any farther witnesses, Mr. Dyer?

Mr. Dyer: No, we do not have any further witnesses.

Chairman McBrearty: That concludes the presentation of your case, does it?

Mr. Dyer: Yes, except for the stipulations which are to be introduced here, and the matter to be read into the record, and the exhibits to be filed with the stipulations.

Chairman McBrearty: Well, let us get the oral testimony in first.

[fol. 256] KUS, THOMAS GEORGE, was thereupon called as a witness on behalf of the Panhandle Eastern Pipe Line Company, and having been first duly sworn by the Chairman to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination.

By Mr. Jennings:

I am manager of the New Business Department of Panhandle Eastern Pipe Line Company, Chicago. I am not the industrial representative that Mr. Fink testified with regard to a few minutes ago. In the capacity that I occupy with Panhandle, I did have something to do with the Ford contract. In about March of last year, there was a meeting at the City Hall, at which there were two members, I think, of the Ford Motor Company present. They heard the evidence, they heard the discussion, and they called—after the meeting they called Mr. Maguire, and told him that they were interested in natural gas. At the instigation of the Ford Motor Company, we went to visit them in connection with gas for their plant. As the result of the visit that we made with the officials of the Ford Motor Company, after this meeting at the City Hall—we discussed their fuel problems for a period of time and, the result was that—the result was the contract that is under discussion now.

There was no plan or intent at any time to interfere with the existing contract for 15,000,000 cubic feet to be furnished by Michigan Consolidated Gas Company. The fact is that we insisted that we did not intend to take any business away from the Michigan Consolidated Gas Company,

and that we would not consider that gas as our part of the contract, that gas which the Michigan Consolidated is now [fol. 257] serving the Ford Motor Company. We have not at any time, in connection with any industry in Michigan, attempted to take away the business of any of their customers. Other industries that we serve directly in Michigan are The Albion Malleable Casting Company, and the Detroit Seamless Tubes Company. The Detroit Seamless Tubes Company is located at South Lyons, I believe. We sell them gas directly from our main transmission line. It is a direct sale. There is no distributing company there.

Chairman McBrearty: There must be a distributing company in Albion.

Mr. Jennings: Yes. Albion, I consider is an independent contractor, and carries it for a distance, say, about 1600 feet or so. That is, an arrangement to meet an emergency during the war, just before the invasion, there had to be a lot of products sent overseas, and the Michigan Public Service Commission, the local company and we got together, and worked out an arrangement.

(Witness continues): Panhandle needs a big industrial interruptible load for the protection of their firm gas deliveries. I specifically refer to the Ford contract here, which is a large volume of gas, it is highly interruptible, and it is 100 per cent curtailable. It is so situated on our pipe line that it will protect to a great extent deliveries to the firm gas users all along the line. I might say to you here that I am comparatively new with Panhandle Eastern Pipe Line Company. I have been with them since December, 1943.

Just prior to this curtailment period for this winter, it was part of my duties to investigate the possibility of interruptible customers. Mr. Fred Robinson, executive assistant to the Chairman of the Board of Panhandle, Mr. Baxter, and I, visited a good many of these plants—these direct interruptible industrial customers—in connection with cur-[fol. 258] tailment. Our purpose was to notify them of the possibility of curtailment, and the extent of it. We happened to make this trip just at the time of the first curtailment, which started December 10, and ended about December 30. I visited Jefferson City, and Mexico City, and informed the people there of the possible interruption, and they were very much disturbed. However, they realized that it was necessary, and we have had very little difficulty.



I want to make clear here that these customers I visited are direct sales. They were told of the condition. They agreed to curtail, and they did curtail. They were already under contract with us. We had other customers that were indirect. That was in Springfield, Illinois. We asked them to curtail. By "indirect" I mean we served them through a local utility. We asked them to curtail, and they immediately notified their eastern office, and their eastern office stated not to curtail until they got orders from the President to do so. The President was Mr. Underwood, of the Illinois Glass Company, of Lincoln, Illinois.

Chairman McBrearty: Your question, I think—I do not think it is responsive, I do not think these answers are responsive, Mr. Jennings. What Mr. Jennings is trying to find out from you are the advantages that the public enjoys because of direct industrial sales. Now, can't you bring that out for me without telling every city you visited in this country?

A. Possibly I can. There is a great advantage in having this Ford contract.

Chairman McBrearty: Advantage to the public?

A. Advantage to the public.

Chairman McBrearty: Let us stick to the question.

(Witness continues): The public I have reference to is firm gas customers. It involves a great volume of gas, and at the time of maximum demand, when there is a great [fol. 259] requirement on the pipe line, and it appears as though there may be an interruption in firm gas deliveries, we can call on a customer, such as Ford, to get off our line, in favor of the firm gas customers. We can do it directly, and if they do not obey our orders, we have a right to either cancel their contracts, in effect, or cut them off. In the absence of a total curtailment, we sometimes apply a partial curtailment line length. The benefit to be derived out of a contract as big as this is that the character of it is such that I am ready to recommend to our people to build capacity for this line to act as a cushion for the protection of the firm gas sales for the entire length of the system, which would include the Detroit area. This plant being located on the extreme end would be beneficial to every customer along the entire line.

**Cross-examination.**

**By Mr. Dyer:**

I have been Manager of the New Business Department of the Panhandle Eastern Pipe Line Company for about a year. I have been with the Panhandle Company since December 1943. Before I became manager of the New Business Department I was in a similar capacity, but without the title. I attended the meeting before the Common Council, in the City Hall, at Detroit, on February 21, February 22, and February 23, 1945. I was there part of the time. I did not talk with the two Ford men that were there at that time. Mr. Jennens was one of them. I don't know who the other one was. I was told by Mr. Maguire to contact the Ford Motor Company. Mr. Maguire advised me that Mr. Jennens of the Ford Motor Company requested that we visit their plant and discuss their gas problems with them.

[fol. 260] The only discussions I had had with any Ford Motor Company people before I went to see them at Mr. Maguire's direction was in a friendly way. All I know about any request of the Ford Motor Company is what someone told me. I do not know of my own knowledge whether any Panhandle representative prior to that time had solicited the Ford Motor Company.

I have testified that, in my opinion, there would be a certain advantage to the firm customers on our line, if we sold this interruptible gas to Ford under this contract. It isn't a fact that there would be the same advantage to the firm customers if this gas was sold to the Ford Motor Company through the local distributing company. We do not get the same results indirectly as we do directly, so far as curtailments are concerned. It is a fact, that under our contract with the local distributing company, we have a curtailment provision, the same curtailment provision that we have in the Ford Motor Company contract.

**Chairman McBrearty:** May I ask a question at this point, please, Mr. Dyer?

**Mr. Dyer:** Certainly.

**Chairman McBrearty:** Mr. Kus, you said before that you can call Ford directly to cut off?

**A.** That is correct.

**Chairman McBrearty:** And that is an advantage?

A. That is the big advantage.

Chairman McBrearty: All along the line?

A. All along the line.

Chairman McBrearty: For your customers?

A. Yes.

Chairman McBrearty: Have you ever had any experience with this particular company, the Michigan Consolidated Gas Company, where, dealing with the same company, with [fol. 261] A. We had no reason. We didn't know—as Ford, you told them to cut off Ford, and they did not do it? far as our records are concerned we had—so far as my records are concerned, we have no list of interruptible customers.

Chairman McBrearty: All right. Then put it in this way: Was there ever a time since you have been with the Panhandle Eastern Pipe Line Company, since 1943, that any one ever called the Michigan Consolidated Gas Company on a curtailment, and they did not comply with the cut-off?

Mr. Jennings: I think that the Chairman is under a little misapprehension. Our contract with the Michigan Consolidated Gas Company is 100 per cent firm, and we have no right to ask them to curtail.

Chairman McBrearty: Oh, I see. That is right, too. Is there a provision in your contract for interruptible customers?

Mr. Jennings: No. Well, yes.

Chairman McBrearty: In the present contract?

Mr. Jennings: Yes. There is a provision that they can negotiate with us for an interruptible customer, but that has never been done yet.

Mr. Dyer (interposing): We have interruptible customers, Mr. Chairman, under our own contracts, but the only gas we can get from Panhandle we have to buy on a firm basis.

Mr. Williams: Mr. Chairman, under the existing schedule of rates promulgated by the Federal Power Commission, there is a provision for service on an interruptible basis. An application may be made under that, and Exhibit 18 in these proceedings are illustrations of applications under that schedule for interruptible gas to be served on an interruptible basis.

Chairman McBrearty: I understand that; I mean, that testimony went in yesterday. But that provision of the new [fol. 262] rate schedule has never been acted upon by the



Panhandle Eastern. In other words, there is no deal between them on interruptible gas.

Mr. Dyer: The request has been made, but it has never been granted, Mr. Chairman.—

Chairman McBrearty: That is the way I understand it.

(Witness continues): If gas was purchased by the Michigan Consolidated Gas Company, under the new schedule RD-2 providing for interruptible gas, we would have the same right to order a curtailment by the Michigan Consolidated Gas Company as we would to order a curtailment if the contract was direct with Ford Motor. If the Michigan Consolidated Gas Company did not conform to our order, I presume that would be grounds for cancelling their contract. When orders for curtailments are given under any of these contracts or schedules, the operating department of the Panhandle Eastern Pipe Line Company decides how much the curtailment shall be. No rules or regulations or conditions, to my knowledge are imposed by any public authority, stating how that curtailment shall be made. So far as any law or rule or regulation is concerned, Panhandle could curtail one customer and not another. They could, but they don't do it. I am not acquainted with the curtailments that have been ordered by Panhandle in the past—only for this winter, but not in the past. I could not say whether the Panhandle Company has ever curtailed any large customer 100 per cent at any time. It has not, to my knowledge. It isn't a fact that during periods of curtailment, they have always allowed large industrial customers some gas. I said I did not know of any 100 per cent curtailment. But there are some of these plants, when they get down to a certain amount of gas, they have to automatically cut off their operations. Panhandle ordered [fol. 263] a one hundred per cent curtailment last winter. I just said that I did not know. I am sorry. I was mistaken. I made a mistake. It was 40 per cent, 75 per cent, and 100 per cent. The first curtailment was 40 per cent, the next was 75, all along the line, and then 100 per cent all along the line. That was the order. I think it was December 17, 1945. All customers were ordered to curtail 100 per cent, both industries served direct by us, and industries served indirectly through a distributing company.

## Cross-examination.

By Mr. Williams:

Q. Mr. Kus, will you state again the title of the position which you have with the Panhandle Eastern Pipe Line Company?

A. I am manager of the Sales Department.

A. Manager of the New Business Department.

Q. As such manager of the New Business Department, have you been given instructions as to the scope of your duties?

A. No, I have not.

Q. Well, how then do you know what you are supposed to do?

A. (There was no answer from the witness.)

Q. Perhaps you do not understand my question. Have you been told what you are supposed to do for the company?

A. I am supposed to be in charge of direct industrial sales.

Q. Now, from your answer, so that we will not misunderstand one another, I assume that your company has created a department to deal directly with industrial users, and that you are in charge of the department, so far as procuring new business is concerned?

[fol. 264] A. That is correct.

Q. Now, who appointed you to this position with the company?

A. Mr. Maguire.

Q. And when he placed you in that position, what did he say to you in regard to your duties?

A. He said nothing.

Q. Well, what territory do you have with the company?

A. All along the pipe line.

Q. That includes the state of Michigan?

A. Yes, sir.

Q. Have you performed any of your duties within the state of Michigan?

A. Just the Ford Motor Company contract.

Q. Haven't you solicited any other customers within the state of Michigan?

A. No, sir.

Q. Well, is it a part of your duties to solicit customers in the state of Michigan?

A. We are not soliciting any customers at this time.

Q. Well, no. This department that you are the head of, it has certain duties, has it not?

A. Yes; it has.

Q. Now, you are to exercise those duties all along the pipe line?

A. Correct.

Q. And the state of Michigan is included within that territory?

A. That is right.

Q. And if I understand you, then, part of your duties would be to solicit new business in the state of Michigan?

A. Yes, sir.

Q. And those are your instructions from Mr. Maguire? [fol. 265] A. Yes, sir.

Q. And in carrying out those instructions, you have contacted the Ford Motor Company?

A. That is correct.

Q. You personally have not contacted any other industrial customers in the State of Michigan?

A. I have been down to the Great Lakes Steel Company, but not in connection with the sale of gas.

Q. Well, now do you have men working for you in this department?

A. Yes, sir.

Q. How many men do you have under you in this department?

A. Two.

Q. What are their names?

A. George Ballard, and Frank Baxter.

Q. Where is George Ballard located?

A. In the city of Detroit.

Q. What is the nature of his duties?

A. He merely represents us in this territory.

Q. As a member of the New Business Department?

A. Yes, sir.

Q. And the New Business Department's business is to procure new industrial customers?

A. That is correct.

Q. Then am I right in saying that George Ballard's business in the state of Michigan is to procure new industrial customers?

A. That is right.



Q. And he is permanently located here?

A. That is correct.

Q. Do you know whether or not Mr. Ballard has called upon any industrial customers in the state of Michigan, under your instructions?

A. Oh, he must have, yes.

[fol. 266] Q. Other than the Ford Motor Company?

A. Yes, sir.

Q. Other than the Albion Malleable Iron?

A. Yes.

Q. Other than the Seamless Tubes?

A. That is correct.

Q. Does he have the entire state of Michigan?

A. He has.

Q. And any customers he succeeds in procuring will be served directly by the Panhandle Eastern Pipe Line Company?

A. Yes, sir.

Mr. Williams: I have no further questions.

#### Re-direct Examination

By Mr. Jennings:

Mr. Ballard has other duties than those I have just mentioned. He visits our present customers to see whether they are capable of curtailment, and whenever they are to be curtailed, it is his duty to see that they are curtailed. He is an engineer by profession. There is no specific formula that we are able to follow as to curtailment. It is arrived at by taking into consideration the pressure in the pipe line, the weather forecast, and the pack in the pipe line.

Mr. Jennings: That is all.

#### Re-cross Examination

By Mr. Dyer:

There is no one in my department by the name of Mr. F. P. Fisher. I know such a man. He is an engineer, living in Detroit. He is not in the employ of Panhandle. He was retained by Panhandle at one time, in an advisory capacity, as an engineer, partly in connection with

industrial business. I do not know during what period he was retained by Panhandle.

Mr. Dyer: That is all.

Commissioner Shilson: If a company is served directly by Panhandle, and it becomes necessary to curtail, the pipe line company can use that gas anywhere along the line, can they not?

A. That is correct.

Commissioner Shilson: If the Ford Motor Company was served directly by Panhandle, and it became necessary to curtail Ford, that gas might be used way out at the other end of the line, rather than in Michigan?

A. That is right.

Commissioner Shilson: Whereas, if the company was served by the Michigan Consolidated Gas Company, and it was necessary to curtail, so as to serve space heaters in Detroit, the Michigan Consolidated then would be in a position to do that, wouldn't they?

A. Yes, I suppose they could.

Commissioner Shilson: Whereas, the pipe line would not be in a position to do that?

A. That is right.

#### Re-direct Examination

By Mr. Jennings:

I am talking about this present contract of 125,000,000, the firm contract. If they were serving as an indirect sale, they could not curtail just for the benefit of Detroit only. It is not the policy of the Panhandle Eastern Pipe Line Company on curtailment to discriminate against any community along the entire line.

Mr. Jennings: That is all.

#### [fol. 268] Re-cross Examination

By Mr. Williams:

Gas when it comes from the gathering systems in the several fields is put in the main transmission lines. All of that gas is commingled. There is no device that is used that would designate any part of the gas as being for any one customer of the company, so far as I know. I understand

that in the transmission of oil, it is possible to use water plugs, for example, put a plug in the oil, and then another plug, so that delivery may be made of a specific identifiable quantity of oil. I know of no means of segregating and identifying natural gas in its transmission—none whatever. If there are any such means, our company does not employ it. All the gas that is produced and put into the transmission line is commingled. When gas is needed for delivery at any point, it is drawn from the common transmission line. The gas that will be delivered to Ford, in the event that we are able to make deliveries under our contemplated contract, and the gas that is delivered to the Michigan Consolidated Gas Company for resale to its customers, both will be drawn indiscriminately from this same pipe line. There is only one transmission line, as far as our company is concerned.

[fol. 269] BALLARD, GEORGE L., was thereupon called as a witness on behalf of the Panhandle Eastern Pipe Line Company, and having been first duly sworn by the Chairman to tell the truth, the whole truth and nothing but the truth, testified as follows:

#### Direct Examination

By Mr. Jennings:

I am a representative of the Panhandle in the city of Detroit. My position is District Representative of Panhandle. I have a professional position with them, of an engineering nature. I am experienced in computing the load a pipe line can carry. I think the most commonly used, and perhaps most universally used formula to compute that load is the Weymouth formula. That is the formula that I use personally. The testimony showed yesterday that the 12-inch pipe line owned by Ford and servicing its plant with gas through the Michigan Consolidated Gas Company, was something like 5,014 feet long. The testimony also showed that Ford wished to have supplied ultimately 60,000,000 cubic feet of gas per day. I have made a computation as to the ability of that line to carry that load. The computation which I made, and which I had checked by the Engi-



neering Department in Kansas City, shows that with a 63,000,000 per day, on a 24-hour day basis, with 80 pounds at the delivery point into the 12-inch line of the 5,000 feet, the 12-inch line would only deliver 23½ pounds at the end of the 5,000 feet. The pressure required by the Ford Motor Company is 50-55 pounds, I understand. This present 12-inch line has not the capacity to deliver 63,000,000 cubic feet per day at the pressures that they require. I have not calculated the exact quantity that that line could deliver at [fol. 270] the pressures they require. Ford is now building an 18-inch line. The reason for building such a large line, a line of such a large diameter would be to get sufficient pressure at the points of delivery, where they desire to use the gas. It should have an 18-inch line to deliver 63,000,000 cubic feet per day.

By Chairman McBrearty:

I said the 12-inch line would only give them 23 pounds pressure at the end of the line, which is approximately 3500 or 4000 feet from the final point of delivery of the gas. There would be gas distributed all along this additional line. I mean 3500 feet beyond the end of the 5,000 foot line. Beyond the 5,000 feet, that is their own pipe line in their plant.

By Mr. Jennings:

The pressure you would have at the ultimate terminal of the 12-inch pipe line, after you got into the plant would be 23½ pounds at the end of the 5,000 feet of line. Then they would have to carry it from there on through this additional pipe, whatever pipe they install, to the various points of delivery. That would reduce the pressure very materially, depending on the size of pipe installed. Pressure is an important factor. I would say it is equally important as volume.

Chairman McBrearty: Could the pressure be stepped up by some devices that you have.

A. Yes, by the installation of pressure equipment, yes.

Chairman McBrearty: In other words, if you take a 12-inch line, you could put the pressure up to how far without endangering the line? Assuming that the pipe line is of ordinary construction, assuming that it is a good line, how much could the pressure be put up to?

A. Well, we carry five and six hundred pounds pressure in our main lines.

[fol. 271] Chairman McBrearty: What is there to prevent a step-up apparatus, to put that pressure up so that 63,000,000 could go through the 12-inch line?

A. They could do that, but it would mean the installation of a compressor station.

Chairman McBrearty: Which is how much cheaper than building an 18-inch line of 5,000 or more feet?

A. I do not know those figures.

Chairman McBrearty: In comparison, would it be a great deal cheaper?

A. I couldn't answer that, because I don't know the costs of compressors and the cost of the pipe, the cost of constructing pipe lines.

By Mr. Jennings:

It is the practice to build new lines rather than to add compressors in such a situation in some industries—it is entirely up to the discretion of the industry, whether they want to put compressors in, or increase their pipe line sizes so that they have less of a pressure drop in those lines. The construction of an addition pipe line by the Michigan Consolidated Gas Company would be possible. I don't know positively, but I am told, and I understand that there is from six to eight months delivery on pipe and valves. I learned that through orders that Panhandle has made.

Mr. Jennings: That is all.

Commissioner Shilson: Did you make any computation as to what pressure could be delivered if the 12-inch line was tied into the 18-inch line that has already been constructed?

A. Well, it would depend at what point you are tying it in.

Commissioner Shilson: Well, at the closest possible point? [fol. 272] In line with the tie-in that was brought out in the testimony yesterday?

Commissioner Shilson: That is right.

A. Yes.

Commissioner Shilson: What result did you get there?

A. At the point of the mixing station, over near the power house, they would have about 52 pounds. That would be paralleling the 12-inch line with the 18-inch line.

Commissioner Schouten: Is there a priority on pipe at the present time, like there was during the war?

A. I couldn't answer that. I don't know. That particular type of work is out of my bailiwick.

### Cross Examination

By Mr. Dyer:

I understand that the Ford Motor Company bought the pipe in St. Louis that they are going to install. I do not know who they bought it from. None of it was furnished by Panhandle. I don't know, as a matter of fact, who furnished the pipe. I don't know anything about it of my own knowledge.

### Cross Examination

By Mr. Williams:

As an engineer, I know of no physical reason why the 18-inch pipe line could not be made to tie into the transmission mains of the Michigan Consolidated Gas Company. It could be made to tie in. I am familiar in a general way with the details of the construction that will have to be done by the Panhandle Eastern Pipe Line Company in order to make delivery of gas to the Ford Motor Company under [fol. 273] the contract. The plan calls for the erection of a metering station by the Panhandle Eastern Pipe Line Company. In order to connect the metering station with the Panhandle Eastern Pipe Line Company's transmission lines, that is, its main transmission lines, on the inlet side, only the pipe incident to and a part of the meter and regulator station will be laid. There is some pipe in connection with the metering and regulatory station. The length of that pipe, I don't know. I do not know it approximately. I assume it would be pipe of lesser diameter than the main transmission line. There is no reason for putting a 22-inch tap on the line. In order to make the connection with the main transmission line, it is necessary to tap the line. To make the actual connection with the main transmission line, they would use a piece of pipe.

Mr. Williams: I ask counsel for the Panhandle Company, do you have a drawing of any kind that will show the detail of this construction.



Mr. Jennings: No, I have not seen any. I do not know as there is one yet.

Mr. Williams: You made an application to the Federal Power Commission for a certificate covering these facilities. That is my understanding of the situation. Now, wasn't it necessary to present a drawing at the time of the making of that application, to show what construction was to be made?

Mr. Jennings: Well, I was not in on that.

Mr. Chamberlain: There was testimony given by Mr. Burnham, at the Federal Power hearing, of which we have copies here, which sets out the nature of this construction, and unless Mr. Ballard knows about it, I think it might be well to have that here.

Mr. Williams: Does counsel for the Panhandle Eastern Pipe Line Company have any objection to the use of the [fol. 274] testimony of Mr. Burnham in this proceeding, that is, we are referring now to his testimony before the Federal Power Commission, and only his testimony as relates to the facilities in question. I do not have in mind whether he testified on any other subject, or not.

Mr. Riggs: Only as to the facilities to be erected by Panhandle.

Mr. Williams: That is right.

Mr. Riggs: We have no objection to that.

Mr. Williams: You have no objection to that.

Mr. Dyer: It is agreed then that that testimony may be stipulated in the record in this case.

Mr. Williams: Well I so move the Commission, that they shall receive into this record, upon stipulation of counsel, the testimony of Mr. Burnham given before the Federal Power Commission on January 11, 1946, and so much of that testimony as relates to the facilities which are to be constructed by the Panhandle Eastern Pipe Line Company.

Mr. Riggs: Can we identify that portion of it?

Mr. Jennings: I suggest that copies be furnished to the Commission, after the hearing closes, to save time now.

Chairman McBrearty: We have a copy of the transcript, Mr. Williams; I have it before me here. Mr. Burnham's testimony starts on page 489 of this transcript, and the Commission can read it at their leisure. I suppose the

stipulation goes to just that part of the testimony which refers to measurements of this metering, measuring and regulating station that you are questioning Mr. Ballard on now.

Mr. Williams: It goes to all of the facilities that are to be constructed by the Panhandle Eastern Pipe Line Company in order to enable it to perform this service to the Ford Motor Company. Is that correct?

[fol. 275] Mr. Jennings: That is correct, yes. I should think it would be agreeable if the Commission use their copy to get that information from.

Chairman McBrearty: Well, then let the record show that stipulation is hereby made permitting the testimony of Mr. Burnham in the Federal Power Commission record, to be material to the issues here, which referred to the facilities of the Panhandle Eastern Pipe Line Company, for which they have applied to the Federal Power Commission for permission to build. Is that agreeable?

Mr. Jennings: It is agreeable.

Chairman McBrearty: Is that correct, Mr. Williams?

Mr. Williams: That is correct, yes.

I have no further question of this witness.

#### Recross-examination.

By Mr. Dyer:

Gas is delivered to the Michigan Consolidated Gas Company at the metering station in Melvindale, I believe, at a pressure of around 86 to 87 pounds. If it is necessary to deliver the required 125,000,000 to the Michigan Consolidated, you may ask for pressures up to 100 pounds to deliver that quantity of gas. If gas were taken in at a pressure of 100 pounds, at the inlet of the 12-inch line, at the end of 5,000 feet there would be a pressure of approximately 40 pounds. I have been stationed in Michigan, by the Panhandle Eastern Pipe Line Company three and a half years. I came to Michigan June 1, 1942. With reference to the pressure which the Michigan Consolidated is entitled to take gas, the gas contract between Panhandle Eastern Pipe Line Company and the Detroit City Gas Company, dated August 31, 1935, in Article XIV entitled, "Pressure" reads as follows:

"Seller agrees to furnish gas hereunder at such pressures as the buyer may require up to but not exceeding

100 pounds to the square inch gauge pressure at the point of delivery. Buyer agrees to install, operate and maintain at the point of delivery such regulating devices as may be necessary to regulate the pressure of the gas delivered hereunder. Seller agrees to use due care and diligence in furnishing gas to buyer at a uniform pressure."

I am the Mr. Ballard that Mr. Kus spoke about as being in his department. I maintain an office in Detroit at 1316 United Artists Building. We occupy two office spaces. I employ a secretary. No other help of any kind. Mr. Frank R. Baxter works for Mr. Kus; he is in the Chicago office. He has not been here for some little time. By some little time I mean a year. He was here last spring, I believe for a week or ten days, two weeks, possibly. He has been here at other times for a day or two at a time. Mr. Kus from the Chicago office has been here to assist me in my work since I came here in 1942. He comes in quite frequently, for a few days at a time. Mr. Baxter and I called on the Aluminum Company of America about February 28, 1945. I do not know the exact date. It was in the winter or the early spring of 1945. We talked to Mr. G. H. Pitts of the Aluminum Company. We asked them what their fuel requirements were. Mr. Baxter did not state, to my knowledge, that surveys were being made of some 90 plants adjacent to a loop line around Detroit, and that information was being gathered as to the potential business for that line. I did not hear him say that. I did not hear him discuss the loop line around Detroit to serve industry at any [fol. 277] other time when I was present, that I recall. I never heard Mr. Baxter make that statement to anybody.

I did not call on the Parker-Wolverine Company at that time. I believe Mr. Baxter did. I do not know who he saw there I don't recall. At about the same time I called on the Bohn Aluminum & Brass Corporation. I take that back. I didn't call on them. I talked with them on the phone. I talked to Mr. Oppen, the fuel engineer. They have plants at Adrian, as well as in the City of Detroit. I believe they are operating an aluminum plant there. It is a D. P. C. job.

I have not personally called on the Briggs Manufacturing Company. I believe Mr. Baxter called on them. I believe he was accompanied by Mr. F. P. Fisher. Mr. F. P. Fisher was the consulting engineer that Mr. Kus testified to, who



was retained by Panhandle at about that time. I did not call on the Hudson Motor Car Company at about the same time. I believe Mr. Baxter did. I don't recall who he saw there. I don't know whether Mr. Fisher was with Mr. Baxter on that call, or not. He was with him on a number of calls. I don't recall whether Mr. Baxter called upon the Commonwealth Brass Corporation about the 6th of March, 1945. It is possible that he did. Mr. Baxter is now in the Chicago office. A call was made upon the Packard Motor Car Company at about the same time. I do not recall whether Mr. Baxter or Mr. Fisher made that call. I was not present. I did call on the Timken-Detroit Axle Company about March 7, 1945. No one was with me. Either Mr. Baxter or Mr. Fisher called on the L. A. Young Industries, Incorporated, on March 9, 1945. I couldn't tell you now which made the call; perhaps both. I couldn't answer now who called on the Federal Mogul Corporation. I believe there was a call made there. I don't know the exact [fol. 278] date; it was in 1945, along about the same time. A call also made on the Chrysler Corporation in March of 1945 by Baxter and Fisher. I don't recall now who they saw there. In the same month a call was made on General Motors Corporation. I am not sure who called on General Motors Corporation, but I believe Mr. Kus and myself.

I don't recall that at about the same time a call was made on the Budd Wheel Company. I don't know. I have never personally called on the Budd Wheel Company. I don't recall now whether Mr. Baxter and Mr. Fisher have, or not. Relative to the call on the Federal Mogul Corporation, I couldn't say definitely whether Mr. Baxter or Mr. Fisher, or both of them were there. Baxter and Fisher did not give any data on the fuel requirements of any plants. They were not instructed to give such information to the Federal Mogul Corporation. I would say a price was not quoted for gas by Baxter and Fisher to the Federal Mogul Corporation, not to my knowledge. I don't know of my own knowledge whether it was, or not. I do not know whether there was any discussion as to whether Panhandle could sell gas to the Federal Mogul Corporation at less cost than the Michigan Consolidated Gas Company could sell it to them. Not being present at the conference, I don't know.

I was not present at the conference at the Packard Motor Car Company. A call was made on the Eaton Manufactur-

ing Company, but which of the two men made it, I don't now. I was not there myself.

Redirect examination.

By Mr. Jennings:

Q. Mr. Ballard, do you know the purpose of these numerous calls that Mr. Dyer has inquired about?

[fol. 279] A. It was an industrial survey, at Mr. Maguire's request, to determine the potential industrial possibilities of the City of Detroit, in the Detroit area.

A. And that could be for the purpose of information on indirect sales?

A. As well as direct.

Mr. Jennings: That is all.

Mr. Dyer: It could be for any purpose you wanted to use it for, couldn't it?

A. Yes.

Mr. Dyer: That is all.

Mr. Jennings: That is all of the oral testimony that we have to offer.

Chairman McBrearty: I think we will take a recess at this point, until 2 o'clock this afternoon.

#### COLLOQUY

The hearing was resumed pursuant to the recess.

Chairman McBrearty: Let us resume, gentlemen.

What is the state of the record now? All testimony has been submitted on both sides.

Mr. Jennings: All parol testimony.

Chairman McBrearty: All testimony has been submitted, and there merely remains the stipulation of fact, I presume, which you gentlemen have agreed upon.

Mr. Williams: I have certain reservations, Mr. Chairman, that may or may not become material, because the stipulations have not yet gone into the record. So I would like to reserve those until such time as the stipulations are in.

Chairman McBrearty: Very well.

Mr. Jennings: The first thing I would like to ask Mr. Dyer is if he is willing that this letter, of February 14, 1945, directed to the Michigan Consolidated Gas Company, at Detroit, may be submitted and added as a part of Exhibit No. 18?

[fol. 280] Chairman McBrearty: That would be page 13 of Exhibit 18.

Mr. Dyer: Yes.

Mr. Jennings: I think it should be marked as a part of Exhibit 18, and attach it right to the exhibit.

Mr. Williams: That is the answer of Panhandle to the request for more gas.

Mr. Jennings: Yes.

Chairman McBrearty: I think that should be stated in the record.

(The document in question was then marked Exhibit 18, page 13).

Chairman McBrearty: This letter which you ask to be introduced in evidence as part of Exhibit 18 is the answer of Hy Byrd, Vice-president and treasurer of the Panhandle Eastern Pipe Line Company, and the letter is addressed to the Michigan Consolidated Gas Company, and I presume it is in answer to Mr. Fink's letter of December 15.

Mr. Jennings: That is my understanding of it, Mr. Chairman.

Chairman McBrearty: There is no objection to the receipt of a copy of this letter in evidence, is there, Mr. Dyer?

Mr. Dyer: No.

Mr. Williams: I have no objection to it as distinct from my objection to the entire exhibit.

Mr. Dyer: I would like to offer in evidence a stipulation of fact, to which counsel for the Panhandle Eastern Pipe Line Company and counsel for the Michigan Consolidated Gas Company have agreed. It has been duly signed by the counsel named.

This stipulation permits the introduction of certain exhibits and certain testimony, in various paragraphs of the stipulation.

[fol. 281] It was my thought to take those up in order, referring to the paragraph of the stipulation, and put them in evidence directly after the acceptance of the stipulation.



Mr. Williams: If this is the proper place upon the record to indicate it, I have an objection to the present state of the stipulation, and the nature of my objection is this:

As I read the stipulation, it is conditional, and I do not believe that this record should be left conditional as to the facts.

To illustrate what I mean, on page 1 of the stipulation there is a statement that this stipulation is made and entered into to supply the Commission with such facts as it may consider necessary for the purpose of ruling on the said motion of Panhandle to dismiss these proceedings.

On page 4 there is the statement:

(Reading): "It is further agreed that, in the event the motion to dismiss is overruled and Panhandle thereafter appears generally, this stipulation may be received in evidence with like force and effect in any further proceedings in this cause."

Now, the condition that I see in the stipulation is that if the Panhandle Eastern hereafter appears generally in these proceedings. Now, it is possible that the Panhandle Eastern Pipe Line Company may not elect to appear generally in these proceedings.

Chairman McBrearty: Well, Mr. Williams, for the benefit of the Commission who do not know your legal terms, would you state briefly the difference between appearing specially, and appearing generally, so that we will know what you are talking about.

[fol. 282] Mr. Williams: Ordinarily, where a tribunal has jurisdiction over the subject matter of a dispute, and proper process has been served, the parties served appear and make answer to the complaint, and such appearance is general, and without any reservation whatsoever.

Chairman McBrearty: That is the usual type of appearance.

Mr. Williams: That is the usual type of appearance.

Now, when parties wish to appear before a tribunal having jurisdiction of the subject matter, and they wish to restrict their appearance, they make what is called a special appearance, and such appearance is limited to the purposes indicated in the appearance, the most usual limitation being to make an objection going to the jurisdiction of the tribunal. There might be other restrictions in the appear-

ance, but any restricted appearance, where the restriction shows upon its face, that is a special appearance.

An appearance unrestricted, or a consent to an adjournment, or any other act indicating the acceptance of the jurisdiction of the tribunal, is a general appearance.

Now, as I read this stipulation, it is conditional upon the Panhandle Eastern Pipe Line Company electing at some future time to make a general appearance in these proceedings, which it may or may not do; and I do not feel that the record should be left in that state. I think the parties should either stipulate as to what the facts are, or they should differ, and allow the facts to be proven.

Chairman McBrearty: May I see, before I pass upon your objection, the two pages you refer to?

Mr. Williams: Yes. They are pages 1 and 4 (indicating). [fol. 283] Chairman McBrearty: All right. I think you refer particularly to Paragraph 5.

Mr. Williams: Paragraph 5.

Chairman McBrearty: Of page 4, this particular paragraph:

(Reading): "It is further agreed that, in the event the motion to dismiss is overruled and Panhandle thereafter appears generally, this stipulation may be received in evidence with like force and effect in any further proceedings in this cause."

Do you have a suggestion to make, Mr. Williams, as to how that paragraph should be worded, so that there will not be any uncertainty, as far as the future position of Panhandle is concerned?

Mr. Williams: I think that both restrictions should be removed from the stipulation, and by both restrictions, I mean the provisions relating to the use of the stipulation for the purposes of the motion to dismiss, and the condition that Panhandle may hereafter appear generally. In other words, the parties are either stipulating facts, or they are not stipulating facts, and the stipulation should not be conditional.

Chairman McBrearty: In other words, the first part of the stipulation says:

(Reading): "It is agreed by and between the parties to this stipulation that on January 17, 1946, Panhandle Eastern Pipe Line Company appeared in these pro-

ceedings specially, for the purpose of making its motion to dismiss, and that this stipulation is made and entered into to supply the Commission with such facts as it may consider necessary for the purpose of ruling on the said motion of Panhandle to dismiss these proceedings."

[fol. 284] Now, your point is that this stipulation of facts is helpful to the Commission for more than the mere purpose of considering whether or not it should dismiss the proceedings before it. Is that correct?

Mr. Williams: That is right. The Commission has reserved ruling on the motion to dismiss, and has proceeded to hear the facts in these proceedings.

Now, the parties have undertaken to stipulate as to the facts. Now, if it happens that I am unduly apprehensive of this situation, that apprehension can be removed very quickly by the attorneys for the Panhandle Eastern Pipe Line Company saying that they have in mind no such restriction; and if they do have in mind such a restriction, why, I do not think that the record should be left in that condition.

Chairman McBrearty: What is your reply to that, Mr. Jennings?

Mr. Jennings: I will be glad to state my position, Mr. Chairman, and I would prefer not to be interrupted until I am through.

Chairman McBrearty (To Mr. Williams): Now, you remember that now, Mr. Williams.

Mr. Williams: Oh, Mr. Chairman, I do not make any promises in that regard. I am not giving him carte blanche. He can proceed as long as I think is proper, and I shall not interrupt him.

Mr. Jennings: Mr. Chairman, the parties most interested in this cause are the Michigan Consolidated Gas Company, and the Panhandle Eastern Pipe Line Company. The controversy is really between those two corporations.

Now, we have sat down together and spent several days and several nights working out a stipulation which we are entirely in accord with, and we are in accord with all of the reservations made by both sides, which is as it should be.

[fol. 285] The first clauses, which are reservations, were made by agreement of the parties, and made pursuant to



the announcement of the Chairman at the last hearing, where it was stated, and I am reading from the record in this case:

(Reading):

"Chairman McBrearty: Gentlemen, it is the decision of the Commission, that the motion advanced by counsel for Panhandle to dismiss will be taken under advisement, and the motion will be decided when we have heard the facts upon which the complaint is based in this case. Otherwise, this Commission would be determining a question without having any facts before it on which it would be basing its determination, and I do not think that that would put us in a very enviable position when this case is reviewed by a higher court, as it is bound to be."

Now, we are still in the position of appearing specially, and we have tried to bring before this Commission all of the facts that it needs, or that it wants, in order to determine the question of jurisdiction.

Now, as a matter of orderly procedure, which is followed by all courts and all semi-quasi judicial bodies, as this is, parties can object to being brought before it on a jurisdictional question, and that question must first be determined before there could be a real hearing on the merits, and, as I see it, and as it is the practice, the Commission will enter an order determining whether or not it has jurisdiction. Then at that point we can either elect to appeal from that order, and have it determined by some higher tribunal, or we can elect then to appear generally; and if we do appear generally at that point, why, this stipulation is to have the same force and effect as if it had been stipulated in [fol. 286] the first place to be a stipulation of fact upon the merits. I think that is what we agreed to, isn't that right, Mr. Dyer?

Mr. Dyer: You and Mr. Chamberlain and, I think, Mr. Yost, discussed that part of it.

Mr. Jennings: I guess that is right. I remember, Mr. Chamberlain, when we got the language that was just referred to by Mr. Williams, we framed it together.

Mr. Chamberlain: Yes, we did that.

Mr. Williams: I am pleased to discover that I did read the language correctly.

Now, there is no doubt in my mind that what I feared is just exactly what counsel has in mind. In other words, if we reach a situation where the Commission rules that it does have jurisdiction of these proceedings, and denies the motion to dismiss, then there are no facts on this record whatsoever, as far as these stipulations are concerned. Then the Panhandle Eastern Pipe Line Company decides in its mind as to whether or not it will appear before this Commission and stipulate as to facts.

Now, that should not be the situation.

Mr. Jennings says that there are only two parties to these proceedings, the distributing company, and his company.

Mr. Jennings: I said the two most interested parties were those two parties.

Mr. Williams: Well, I do not know how interested they are, but I feel they are vitally interested, and there is a third party to these proceedings, and that party, or rather those parties, are the people of the State of Michigan. Well, I believe that expression should be singular. I think they are very interested in whether or not we go through a lot of idle motions thinking that we have something, and [fol. 287] ending up and discovering that we do not have a thing.

Chairman McBrearty: Mr. Chamberlain, I cannot quite understand this stipulation that Mr. Jennings says is agreeable to you people representing the Michigan Consolidated Gas Company. I am inclined to view this matter as Mr. Williams, representing the Attorney General's office, who is here to protect the public as he believes it is affected by the matters before this Commission. I cannot quite get my own mind clear on this thing, as to why the stipulation is offered, only for the purpose of permitting this Commission to pass upon a motion to dismiss filed by the Panhandle Eastern Pipe Line Company, and, apparently, from what Mr. Jennings states, that type of stipulation is agreeable to you. I cannot understand that.

Would you explain this stipulation, Mr. Chamberlain?

Mr. Chamberlain: Yes, I will try to, Mr. Chairman.

Chairman McBrearty: So that any misunderstanding that I now have on the subject may be cleared up.

Mr. Chamberlain: The stipulation, as you have it, as very frequently happens, is the cover line, or the result of efforts

of attorneys trying to adjust their differences in the presentation of a case. Now, there is some difficulty about that, and my difficulty comes right from the commencement of this case.

This case, if I understand it, was based, or, is based upon a complaint, in which we suggested that there should be an investigation of the activities of Panhandle, with a view to determining whether or not they were a public utility acting within the state.

The order to show cause came out, and that was an order to Panhandle to show cause why they should not be held as a utility. A motion was made by Panhandle upon one issue, which would be difficult, I think, to pick out, in that [fol. 288] motion to show cause. In other words, instead of appearing, they attacked one element of it, to-wit, that a sale to the Ford Motor Company, which is only one item involved in this matter, was an interstate sale, and they asked that the proceedings be dismissed, because one element of it, they say, was a sale in interstate commerce.

Now, I find it difficult to conceive how an appearance of that kind is good.

When you split your motion, and you pick up one individual transaction, you see what has been alleged there is that these people have established themselves in business in this state, as well as along the pipe line, in making direct sales, which we believe to be a matter of distribution in the state, and purely intrastate commerce. But Ford appears in there. Here is a sale to Ford. A motion is made to dismiss, not because of activities, on the part of Panhandle, but because the sale to Ford is said to be in interstate commerce. It is an anomalous situation.

Now, the matter came up between counsel, as I recall it, in this fashion. They made a special appearance, and they wanted to preserve that.

Now this special appearance, I am not a Michigan lawyer, as you know, but in moving about among the states, I find it is a tricky thing, and in some of our states it is a very difficult thing. So far as I am concerned, I have no disposition to in any way prejudice the position that was taken by counsel as to the special appearance, and that is a matter which, among Michigan lawyers would have to be determined.

We very early objected to going into the work of preparing a stipulation unless it could be used for general pur-



poses, and, therefore, we asked that the stipulation that you find in the second paragraph be put in. Our purpose there, as I view it—

[fol. 289] Chairman McBrearty: Pardon me. Let us stop, so that I can follow you. What is the second stipulation you refer to?

Mr. Dyer: In the fifth paragraph.

Mr. Chamberlain: In the fifth paragraph is something that we asked for.

Chairman McBrearty: All right.

Mr. Chamberlain: In other words, we felt that there was going to be a tremendous amount of work involved, and that it was of value, and could be of value to the Commission in determining the matters which they were ordered to show cause on.

You see, my difficulty there comes in that they pick out one particular thing there only. It is not an attack upon your order to show cause. You ordered them to show cause why, under their activities, they should not be held as a public utility within the state. They say, we have made a sale to the Ford Company out there, and that is in interstate commerce. They say, we want this dismissed, it has no bearing upon the generality of this case at all; it is merely one single item.

So we insisted upon this second provision there, that Paragraph 5 and, as I say, without any desire to prejudice Mr. Jennings in any way in his position, and he then did agree that it should be used in that way. Now, that is the way it wound up, as a matter of compromise.

Chairman McBrearty: Well, that helps me understand this agreement. Will you go on, Mr. Williams?

Mr. Williams: I call attention to page 47 of the transcript of the proceedings of January 17, 1946.

Chairman McBrearty: What date?

Mr. Williams: January 17, 1946, where I say to the Commission:

(Reading): "Mr. Chairman, one of the issues before the Circuit Court of Ingham County in Chancery was [fol. 290] as to the appropriate remedies of this company (referring to the Panhandle Eastern Pipe Line Company), and at that time I took the position that they could appear before this Commission and make a motion to dismiss and save to themselves that question,

and I would like to so stipulate on the record at this time, that if counsel goes ahead and helps in the preparation of this record by stipulation, thereby he waives no right or any benefit he would have with his motion."

Referring to his motion to dismiss.

Mr. Jennings then says:

(Reading): "Thank you, Mr. Williams. That is exactly what I want."

Now, I have tried repeatedly to save to counsel the benefit of his special appearance and his motion to dismiss on this record. But I have difficulty conceiving how there could be any misunderstanding at any time as to the purpose of the stipulation. The purpose of a stipulation is to establish facts. Now, those facts either exist, or they do not exist.

We have protected his position on his motion. He has nothing to worry about on his motion to dismiss. I equally want nothing to worry about, as to whether or not if that motion to dismiss is denied, we have any facts upon this record.

Now, I do not believe that counsel for Panhandle necessarily want to appear to go one way, while they have a mental reservation in their mind to go another. But that has happened in cases, and I want this record to be so that when I get through, I know I have got something.

Mr. Jennings: Maybe we can solve it in this way, Mr. Williams.

[fol. 291] In the state courts, when we have such a procedure as this, and there is a motion to dismiss, attacking jurisdiction, or otherwise, the court in its decree determining the motion, determines to deny the motion, and it makes a provision that within fifteen days a general appearance shall be entered, and the case proceed on its merits, unless an appeal is taken from the order of the court denying the motion to dismiss.

Now, if that situation comes about here, I will agree, first, that if we do not appeal from such an order, why, this stipulation has full force and effect on the merits.

I further agree that if we do not appeal, but fail to appear generally, then this stipulation shall have full force and effect on the merits.

So Mr. Williams is not going to get in the position of this stipulation of facts being withdrawn from him.

Now, then, I will further agree that if we do appeal, and we do not reverse this Commission, either in the Circuit Court of Ingham County, or in the Supreme Court, that this stipulation will have full force and effect.

Do I make myself clear?

Chairman McBrearty: Yes, you do.

Mr. Williams: You make yourself clear, but I am not willing to accept it under those conditions.

This Commission has proceeded to a hearing in this matter, that is what we are now doing. We are hearing these proceedings upon the complaint.

Now, we either have a record before us, or we do not have one. If you take an appeal, you are going to appeal on the entire record.

Now, you and I understand one another perfectly, but I am not willing to agree to your conditions.

Chairman McBrearty: Just let me ask you this question: What if this Commission overrules your motion to dismiss, [fol. 292] and you say, "Very well; I only appeared specially for the purpose of making the motion. I have never agreed to appear generally. Now, I will appeal that order directly," as you have a perfect right to do.

Mr. Jennings: We have a right to do that.

Chairman McBrearty: What good is this to us, or what good is this to the reviewing court? What does the reviewing court have in this record that will aid it in determining whether or not the Commission was right or wrong in its decision?

Mr. Jennings: Well, we have stipulated quite fully as to the interstate character of the business, which is the question which I take up. Mr. Chamberlain was just a little bit mistaken on the breadth of our motion. If you will refer to the written motion, it was not only addressed to the Ford contract, but all contracts for direct sales in interstate commerce. We covered that in the written motion.

Mr. Dyer: Let me see if I understand what this situation is here.

As I understand it, these stipulations of fact and evidence are unqualifiedly agreed to, and become a part of the record on any appeal from the decision overruling your motion to dismiss.

Mr. Jennings: I think that is right.

Mr. Williams: Now, wait a minute, Mr. Jennings. I do



not want any misunderstanding. That is the first time you have said that now. Is that what you mean?

Mr. Jennings: The Commission announced at the last meeting that they needed to have facts in order to determine my motion in the proper way.

Chairman McBrearty: That is right, yes.

Mr. Jennings: And we are by this stipulation, and under the motion to dismiss, giving you those facts, and they should be a part of the record that goes to the Ingham Circuit Court, or to the Michigan Supreme Court.

[fol. 293] Mr. Williams: Or any other court.

Mr. Jennings: Or any other court.

Mr. Williams: Having jurisdiction.

Mr. Jennings: Yes.

Mr. Williams: All right. Now, if the decision is that the Commission has jurisdiction, then you have an election as to whether or not there shall be further proceedings.

Mr. Jennings: I consented a few minutes ago on the record that we would leave that in the hands of the Commission, so that they could order a general appearance within a limited time, and I said if we do not appear, and there was no appeal pending, why, then—

Mr. Williams (interrupting): "And if there was no appeal pending," that is why I am not able to accept this stipulation on its face.

Mr. Chairman, the stipulation is conditional. Now, the facts are either there, or they are not there. If they are there, and can be agreed to, fine. If they cannot be agreed to, fine. But I am not going to think that I have got a record, and end up by not having one.

Mr. Dyer: As I understand it, all that Mr. Jennings is interested in is protecting his right if he cares to take an appeal from an order overruling his motion to dismiss.

Mr. Williams: I think we have protected that for him on the record.

Mr. Dyer: Now, it would seem to me that the whole situation could be solved by agreement by Mr. Jennings, that if he does not take an appeal, that he will enter a general appearance; or, if he does take an appeal from an order overruling his motion to dismiss, and upon decision by the final court his position is not sustained, that he will then enter a general appearance.

[fol. 294] Mr. Williams: I am willing to stipulate again, because I feel I have already so stipulated, that by stipu-

lating as to the facts in these proceedings, Mr. Jennings does not waive any benefit or any right to object that enured to him by reason of his motion to dismiss.

I want to save to Mr. Jennings, and I do not mean any hair-splitting saving—I want to save to him the full benefit of his motion to dismiss.

Now, if that is his purpose, I am stating again on the record, that he has all of that, and I am not quibbling about it, but I do not want any quibbling about this other thing either. I do not want to get through and find out that Mr. Williams has slipped, and that he cannot read double meaning language. Now, either we are stipulating as to facts, or we are not stipulating as to facts.

I repeat again that for Mr. Jennings' benefit, I reserve to him, and agree that it is so reserved, that he shall have full benefit of his motion to dismiss. But I do not want any misunderstanding about whether or not we have facts in this record, or whether we do not have facts in this record.

Mr. Jennings: I agree to Mr. Dyer's suggestion. I do not think that any court, or any tribunal in this state, will ever say that I have been anything but entirely honest with it; and I do not know a member of the Michigan Bar that can say that I have not been entirely fair and honest with any opposing counsel at any time.

But it is a rule in this state, that if an attorney does anything at all inconsistent with his special appearance, that he waives that; and you cannot stipulate, as Mr. Williams suggests, that I have my right. If I do not adhere to my position now, from now until there is a decision, I have waived it, and I cannot get into that position.

[fol. 295]. Mr. Williams: I do not agree with that being the law.

Mr. Dyer: I have another suggestion, that perhaps we can change the language of Section 5, the last sentence?

It is further agreed that in the event the motion to dismiss is overruled, and that decision is sustained on appeal, if an appeal is taken, then this stipulation may be received in evidence with like force and effect in any further proceedings in this cause.

Mr. Williams: That is just the point, Mr. Dyer; there will be no need for further proceedings if this Commission has jurisdiction. That is walking down the same street twice.

Mr. Dyer: Yes.

Mr. Williams: When there is no need for it.

Mr. Dyer: I see your point.

Mr. Williams: If this Commission has jurisdiction, we have heard this matter, and this matter has been closed, and there is no need to hear it over again.

Chairman McBrearty: That is why I cannot understand this stipulation.

Mr. Williams: Why should we come in again? He may elect not to appear.

Mr. Jennings: I made a promise on the record on that.

Mr. Williams: If we have jurisdiction, all counsel can do is to question our jurisdiction. He cannot deprive us of jurisdiction if we have it. If we do have jurisdiction, we have had a hearing. The hearing has been concluded. The facts have been established. Now, if we do not have jurisdiction, we could not institute the proceedings.

Mr. Dyer: I think you are right.

[fol. 296] Mr. Williams: But if we have jurisdiction, he cannot deprive us of jurisdiction by anything that he does.

Mr. Dyer: That is right.

Mr. Williams: And we have had a hearing.

Mr. Dyer: Yes.

Mr. Williams: Now, I am not going to have this record in such a position that when it ends up somebody will say, yes, you had a proceeding, but you agreed that it didn't amount to anything. Now, I am not going to do that.

Mr. Dyer: In other words, we do not want to have this thing over again.

Mr. Williams: That is it exactly. We have either got jurisdiction, and exercising that jurisdiction we have had a hearing, which has been completed—

Mr. Dyer: I think you are right.

Mr. Williams: —or we do not have any jurisdiction, in which case there never should have been any proceedings.

Mr. Dyer: And the only thing to do, in view of that situation, is to so arrange this as to fully protect Mr. Jennings' rights.

Mr. Williams: And I do not know how I can do that any more clearly than I have done it.

Mr. Dyer: Well, now, then, that being the case, what suggestions do you make as to the language of this stipulation?



Mr. Williams: I think we might just as well take that language out of the stipulation, or stipulate that, reserving to Mr. Jennings the full benefit of his motion to dismiss, and I mean all the benefits of it, not considering that he has waived any part of it by entering into a stipulation of facts, the facts are stipulated as follows, period.

[fol. 297] Chairman McBrearty: As it stands now this stipulation is entered into by you people for the purpose of giving the Commission facts only to consider the motion to dismiss. I do not understand that is your purpose, either you, Mr. Dyer, or you, Mr. Chamberlain, or you, Mr. Jennings.

Mr. Dyer: No, that is not my purpose.

Chairman McBrearty: These facts in here have nothing whatever to do with the motion to dismiss. They are facts upon which you people hope to persuade the Commission of the rightness, if you can use the word, of your cause.

Mr. Jennings: Well, you are agreeing with my motion at the beginning of the hearing this week, that you did not need these facts to determine the question of jurisdiction.

Chairman McBrearty: No, I am not. I do not agree at all that we do not need facts. I do not see how we can try this case without facts, any more than the Federal Power Commission tried to try this case without facts. They knew better than to attempt to do it, and I think we do.

Mr. Jennings: I can assure you that there will be no need for a retrial if I am wrong on the question of jurisdiction.

Mr. Dyer: That brings us into exact agreement, if I understand it, if we can formulate the appropriate language.

Mr. Williams: The language, as far as I am concerned, is not going to be difficult, gentlemen. You just stipulate as to certain facts. I agree that Mr. Jennings makes no waiver by so stipulating.

Mr. Jennings: But you cannot stipulate to that sort of a thing, even if the parties stipulated—

[fol. 298] Mr. Williams (interrupting): You and I have disagreed on the law, perhaps, before. Sometimes you have been right and perhaps sometimes I have been right. But I certainly would be surprised, be very much surprised to learn that parties cannot make a record and save the benefits of objections to other parties.

Mr. Jennings: Off the record.

(Then followed a discussion off the record).

Mr. Williams: I would like this on the record, if you please.

If the motion to dismiss is overruled, and the Commission rules that it does have jurisdiction, and you take an appeal from that ruling to any court, this stipulation may be incorporated as a part of the record on the appeal, to any court.

Mr. Jennings: That is right, to any court.

Mr. Williams: This stipulation may be incorporated by any of the parties as part of the record on that appeal.

Mr. Dyer: Also the stipulation of evidence.

Mr. Jennings: Yes, everything that is going into the record this week.

Mr. Williams: All right. Now, let us go back and take up the paragraph that you have just stated, Mr. Dyer. Now, what was that paragraph?

Chairman McBrearty: That is, if you don't appeal, entering a general appearance, you mean?

Mr. Williams: Let us see what that is.

Mr. Dyer: It is the very last one (indicating).

Mr. Williams: The one before. I want that repeated, so that we will have no question about it whatever. Mr. Dyer made a statement, and Mr. Jennings said, "That is right." Perhaps if that is repeated, so that we all know here what it is, that may take care of it.

[fol. 299] Chairman McBrearty: Just preceding your present remarks.

(The portion of the record then referred to was then read by the reporter as follows:

"Mr. Dyer: Let me see if I understand what this situation is here.

"As I understand it, these stipulations of fact and evidence are unqualifiedly agreed to, and become a part of the record on any appeal from the decision overruling your motion to dismiss.")

Mr. Dyer: If you do not appeal, or, if you do appeal, and your appeal is overruled, then this case, this proceeding may be considered as submitted on the record now presented.

Mr. Jennings: That is right.

Mr. Williams: In other words, there will not be any need for any further hearing?

Mr. Jennings: No.

Mr. Williams: The facts of this proceeding will constitute the record without any need for any further hearing.

Mr. Jennings: That is right. The only exception would be if counsel for both sides agreed that something more should be called to the attention of the Commission.

Mr. Williams: What you mean by that last statement is that you reserve the right—

Mr. Jennings: No, I am not reserving it—

Mr. Williams: Let me finish my statement. You reserve the right to make a motion to the Commission to reopen the proceedings, to take any further proofs as you think are necessary.

(Then followed a discussion off the record).

[fol. 300] Chairman McBrearty: Let us get on the record again. Then, so far as you are concerned, Mr. Williams, with the assurances that you have had from counsel on this stipulation, you have no objection to the reception of the stipulation of facts into the record?

Mr. Williams: I feel that I have been assured that there will be no need, in the event that it be determined lawfully that this Commission has jurisdiction, to hold any other hearings on this matter. I think the matter has been heard, and I think that I have been so assured.

Mr. Dyer: And that the Panhandle Eastern Pipe Line Company will regard it as submitted on this record, subject to our stipulating to additional matters which we will offer to the Commission.

Mr. Jennings: Yes. I have stated on the record my position, and I understand this is agreeable to all.

Mr. Dyer: And it may be understood then and agreed between all counsel here that Paragraph 1 on page 1, and Paragraph 5 on page 4, are amended to conform to the stipulation now appearing on the record, as a result of this oral discussion?

Mr. Jennings: Yes.

Mr. Williams: That is, of course, acceptable to me. I have one or two other remarks on the stipulation, Mr. Chairman. I have not had a chance to complete them all.

Mr. Dyer: All right.

Mr. Williams: On page 17 of the stipulation, in Paragraph



26, the second sentence thereof is as follows, referring to the Panhandle Eastern Pipe Line Company: (Reading):

"It has not qualified in any respect as a public utility operating within the State of Michigan."

[fol. 301] I choose that sentence as illustrative of the reservation that I feel that I should make. Perhaps the parties have not intended that the stipulation should be binding on the Commission as to all of the facts.

Mr. Jennings: I do not see how it could be.

Mr. Williams: In other words, I can read that sentence with several meanings, and with one of those meanings I disagree very much.

Now, I am using that sentence to illustrate certain other portions of the stipulation.

If it be understood that the Commission's right to draw conclusions, inferences and other treatment of the evidence as presented in the stipulation is fully reserved, I have no other objection to the stipulation.

Mr. Jennings: The Commission has the right to make its findings, as it interprets the testimony, whether it be in deposition, or stipulation, or otherwise. That is simply the statement of our claim.

Mr. Dyer: Why not amend that sentence, "It does not claim to be qualified in any respect."

Mr. Jennings: No. I want it just as it is.

Mr. Williams: I think with our reservation I will not make any objection to the specific facts as stipulated; but I did not want any misunderstanding that there is any restriction so far as the Commission's powers are concerned.

Mr. Dyer: That is agreeable to me, that understanding, Mr. Williams, and I assume it is to you, Mr. Jennings?

Mr. Jennings: It is to me, yes.

Mr. Williams: In other words, taking that one sentence as illustrative, the Commission could find to the contrary.

Mr. Jennings: Oh, yes.

[fol. 302] Mr. Williams: That is, assuming that it has some reasonable basis for its conclusion.

Mr. Jennings: Yes, in the same manner as they could discard the testimony of any witness that did not please them.

Chairman McBrearty: I do not understand that the Com-

mission has to accept any fact, even though the fact is stipulated to.

Mr. Williams: That is just what we are agreeing to on the record.

Mr. Jennings: The Commission determines the facts from the record that is presented to it.

Mr. Dyer: With those amendments to the stipulation now appearing of record, the stipulation of fact is received by the Commission, as I understand it?

Chairman McBrearty: That is true.

Now, there is one other thing, gentlemen—

#### PLAINTIFF'S OBJECTIONS TO STIPULATION OF FACT

Mr. Jennings: Before we go into anything else, in Paragraph 4 there is a reservation that each party can object on the ground that certain evidence is immaterial or incompetent, or irrelevant. So it is necessary at this time for me to protect myself on the record in that regard, and I will be as brief as I can, but it will take a few minutes.

Now, Paragraph 6 of the stipulation, in that paragraph, I object to the materiality of any fact in reference to the Albion Malleable Iron Company that is stipulated in the record.

Chairman McBrearty: The reason for the objection, I presume, appears in the stipulation, that it is not material to the issue.

Mr. Jennings: I state that it is not material to the issue.

Paragraph 28, which is in reference to the Albion Gas Light Company, Subdivisions A, B, C, D, E, F, G, H, I, J, [fol. 303] K, L, M, and N, I object to all of the facts therein stipulated as not being material to the issues before the Commission.

Paragraph 29, which relates to the Michigan Seamless Tube Company, I object to all the facts therein set forth as not being material to the issue.

Paragraph 30, which has reference to the Continental Oil Company, I object to the admission of those facts as not being material to the issue.

Paragraph 31, with reference to the contracts and arrangements with the Consumers Power Company, I object to the facts therein stipulated as not being material to the issue.

Paragraph 33, which is with reference to the Federal

Power Commission proceedings, in reference to the Indiana situation, I object to the allegations of fact therein as not being material to the issue, except in so far as there might be testimony in there which counsel claims is an admission against interest. I recognize their right to produce any such admissions.

Paragraph 34, which is in reference to the Anchor Hocking Glass Corporation, an Indiana corporation, located in Indiana, I object to any testimony with reference to the furnishing of gas on a direct sale to that company, as not being material to the issue here.

Paragraph 35, which has reference to all other industrial gas furnished direct by Panhandle Eastern Pipe Line Company to Indiana customers, I object to that as not being material to the issue here.

The same objection as to Paragraph 36, which refers to the Central Indiana Gas Company.

Paragraph 38, which refers to the Kokomo Gas & Fuel Company.

Paragraph 40, in reference to the Kentucky Natural Gas Corporation, all of the facts therein set forth are objected to as not being material to the issue here.

[fol. 304] Paragraph 41, which goes to the number and classification of gas consumers, served by gas from Panhandle Eastern in Michigan, I object to those facts which are in the nature of figures only, as being immaterial to the issue here.

Paragraph 43, I object to the admission of the minutes of a meeting of the corporation on March 11, 1941, as not being material to any issue here, and if, in view of the stipulations we have previously made, there comes a time when this stipulation of fact becomes part of the record for hearing on the merits, then I would want to have the same objections applied at that time.

Chairman McBrearty: You have protected yourself, it seems to me; twice, Mr. Jennings: In Paragraph 4, you have agreed that by making this stipulation of fact, no party hereto waives any objection it may have to the relevancy or materiality of any fact herein stipulated.

Mr. Jennings: Well, there is another place, I do not have it right before me, where it was stipulated that either those objections would be made on the record, or be made in writing at the time the stipulation was filed, but we do not have



it in writing, we did not have time, we finished this at about 11 o'clock last night, and we did not have time then to go ahead and make the objections in writing.

We are in accord on that, are we, Mr. Dyer?

Mr. Dyer: Yes. That is in the same Paragraph 4, which the Chairman refers to, the provision that unless made at the time the stipulation is submitted, they are considered waived.

Chairman McBrearty: Oh, I see.

Now, with those reservations just stated, this stipulation of fact is received.

[fol. 305] Mr. Dyer: I would like also at the same time, Mr. Chairman, to enter our objections to Paragraphs 17, 18, 20 and 21, as not being relevant or material to the issues in this case.

Mr. Jennings: 17 and 18?

Mr. Dyer: 17, 18, 20 and 21.

Chairman McBrearty: It will be so understood. Your objections are received.

Mr. Dyer: Yes. Now, if that covers that part of it, I will say that the stipulation provides for the admission of certain exhibits and testimony upon offer of either party. In connection with the provisions of Paragraph 1 of Part 6, it is understood that the purposes of the Panhandle Eastern Pipe Line Company, as expressed in their articles of incorporation, might be introduced in evidence, together with the admission or the stipulation on the record that the certificate of admission issued by the state of Michigan to the Panhandle Eastern Pipe Line Company, authorizing it to do business in Michigan, as a foreign corporation, does not in any way restrict the powers of the corporation as expressed in the articles of association.

#### INTERVENOR'S OBJECTIONS TO STIPULATION OF FACT

Mr. Jennings: I had copied and sent to me, while we have been here, the purposes from the Corporation and Securities Commission files, and I am informed that the usual certificate of admission was issued. Of course, I have been informed by parol.

Mr. Dyer: And, of course, the usual form does not in any way restrict the powers of the corporation.

Mr. Jennings: That is right, yes.

Mr. Williams: Off the record.

(There was a discussion off the record.)

Mr. Jennings: That will be Exhibit 19, I believe.

(The document above described was then marked Exhibit No. 19.)

[fol. 306] Chairman McBrearty: Therefore, in furtherance of your stipulation contained in Paragraph 6, on page 4 of the stipulation of fact, to this effect, "A certified copy of the certificate of admission may be received in evidence," you are now offering this copy.

Mr. Dyer: And as modified by our agreement here.

Chairman McBrearty: Yes. And as modified by your agreement of record, you are offering this copy of the articles of association.

Mr. Dyer: Stating the purposes—

Chairman McBrearty: Stating the purposes of the Panhandle Eastern Pipe Line Company.

Mr. Dyer: That is right.

Chairman McBrearty: That has been marked by the reporter Exhibit 19, and will be received in evidence.

Mr. Dyer: At the suggestion of counsel for the Commission, I will discontinue the introduction of this testimony, and submit at this time a statement of evidence and stipulation regarding thereto, which has been signed by counsel for both the Michigan Consolidated Gas Company, and the Panhandle Eastern Pipe Line Company.

Mr. Jennings: As to that stipulation, we have the same reservation as we had in the other one, and we must make our objections on the record, if they are at no time filed in writing.

Now, my objection first, is as to the competency of the testimony, as to the statements claimed to have been made by any officer or employee of the Panhandle Eastern Pipe Line Company, other than Mr. Maguire, Chairman of the Board, and Mr. Buddrus, President of the company, on the ground that the other representatives of Panhandle Eastern could not competently make any admission against interest, or bind the corporation by any statement that they might make.

[fol. 307] I also object to the receipt of certain correspondence which could be binding upon the Panhandle Eastern Pipe Line Company, and specifically the letter of September 1, 1943, on page 15 of the stipulation, to the Federal Power Commission. The signature does not appear on the

letter, but it was not, as I understand it, from the Panhandle Eastern Pipe Line Company, but was correspondence between the Federal Power Commission, and some local utility in Indiana.

On page 16, there is a like letter, dated October 18, from the Central Indiana Gas Company to the Federal Power Commission.

Chairman McBrearty: That is dated October 22, I think.

Mr. Jennings: That is right. Just correct that.

So that I will not inadvertently omit any of these letters, I object to the admission of any letter from anyone other than the Panhandle Eastern Pipe Line Company, to any authority, or any letter except those that Panhandle might have written, between parties who are not parties to this present proceeding, as not being binding on the Panhandle Eastern Pipe Line Company.

Chairman McBrearty: Well, this statement of evidence is received by the Commission, subject to your objection as to not only the materiality of it, but the propriety of it.

Mr. Jennings: The competency of it.

Chairman McBrearty: The competency of it. All right.

Mr. Jennings: Now, in either one or the other of these stipulations, there was copied some testimony by Mr. Neuner.

Now, there are two questions and two answers which we would like to have added, and rather than read them, I will be glad to hand them to the reporter, and have them copied into the testimony at this point.

[fol. 308] Chairman McBrearty: Very well.

The questions and answers, in the testimony of Mr. G. J. Neuner, Vice-President of Panhandle Eastern Pipe Line Company, before the Federal Power Commission, Washington, D. C., in Docket No. G-20, October 22, 1941, are as follows:

(P. 405) Q. (By Mr. Clark): Now, Mr. Neuner, suppose you did not have or did not get the Zilwaukee load or the Midland load, how far into the north line or into any of the pipe lines, the unbroken red line shown on Exhibit 33, would Consumers Power Company local gas travel as a practical matter, under the service contemplated by this contract?

A. To answer that question, we would have to take into account, as a practical matter, the load that exists



at Flint, the load that exists at Pontiac and compare those loads with the amount of gas which the Consumers Power Company has the privilege of supplying.

In other words, if they have the privilege of supplying 30 per cent of five billion feet, or 30 per cent of 5,800,000,000 which is the estimate of the total load for the first year, they would have the privilege of supplying approximately 1,600,000,000 the first year. The total load at Flint is in excess of two billion cubic feet so that, as a practical matter, (P. 406) if they supply 1,600,000,000 of local gas and the Flint market accounts for over two billion cubic feet, I think it is reasonable to say that, as a practical matter, the Consumers Power Company's gas will never go below Flint except possibly on the coldest winter days, at which time it may go down as far as the Pontiac division.

[fol. 309] In my best judgement, it will never go beyond Pontiac and it is further my judgment that it is on very, very few days per year that it will ever reach Pontiac.

Q. Well, is it your opinion that it will even go that far, Mr. Neuner, considering what you stated concerning the Zilwaukee power plant and the Dow Chemical Company?

A. If those loads develop and I have every confidence that they will, it is my best judgment that except possibly on the coldest winter days when those plants would be shut off on interruptible contracts, that the Consumers Power Company will never go through any of those lines.

#### OFFERS IN EVIDENCE

Mr. Dyer: We are proceeding to introduce the exhibits provided by the stipulation of fact.

Referring to Paragraph 4 of the stipulation, page 7, it is provided that all applications and orders pertaining to the approval of the lines of the Panhandle Eastern Pipe Line Company, might be offered and received in evidence by reference to the originals thereof, as appearing in the files of the Commission.

We have here such as we care to introduce, and it might be easier to have them marked as exhibits, and made part of the record.

Chairman McBrearty: Let us have them numbered.

Mr. Dyer: Yes. This will be Exhibit No. 20.

(A document was thereupon marked Exhibit No. 20.)

Chairman McBrearty: Will you identify Exhibit No. 20, Mr. Dyer, please?

Mr. Dyer: Yes. This is a copy of the application of the Michigan Gas Transmission Corporation, dated May 16, 1936, for approval of map or plat, and the construction of natural gas transmission pipe line.

This is Exhibit No. 21.

[fol. 310] (A document was thereupon marked Exhibit No. 21.)

Mr. Dyer: Exhibit No. 21 is a copy of the order of the Michigan Public Service Commission, dated March 30, 1936, based on the application described as Exhibit No. 20.

Mr. Jennings: Had you completed your offer?

Mr. Dyer: Yes.

Mr. Jennings: I object to the receipt of each of those exhibits as not being material to any issue before the Commission.

Chairman McBrearty: Exhibits 20 and 21 are received, subject to your objection.

(A document was then marked Exhibit No. 22.)

Mr. Dyer: Exhibit No. 22 is a certified copy of the petition of the Panhandle Eastern Pipe Line Company, dated May 29, 1941, re-transmission line construction application, requesting the Commission's approval of the attached map or plat.

Mr. Jennings: Does that refer to the Consumers Power Company's contract?

Mr. Dyer: That is the application of May 29, 1941, relating to the Consumers line.

Chairman McBrearty: What is the relevancy of these applications and orders, to show that the Panhandle Eastern Pipe Line Company have once submitted themselves to the jurisdiction of our Commission?

Mr. Dyer: That is the idea.

Chairman McBrearty: Is that what you claim?

Mr. Dyer: That is what we claim, yes, that they have accepted certificates of—

Chairman McBrearty: And in reply, Mr. Jennings, what do you claim these show, that all that is shown by the exhibit is that you are submitting to the police power of the Michigan Public Service Commission?

[fol. 311] Mr. Jennings: That is right, only submit, in so far as the police power is concerned, and we object—well, you have the order there first, have you?

Mr. Dyer: That will be Exhibit 23.

Mr. Jennings: Well, I object to the receipt of each of these as being immaterial to the issues now before the Commission.

Mr. Dyer: This will be Exhibit 23.

(A document was then marked Exhibit 23.)

Chairman McBrearty: Exhibits 22 and 23—I am sorry—

Mr. Dyer: Exhibit No. 23 is the order of the Michigan Public Service Commission, dated June 18, 1941, approving the application made in Exhibit 22.

Chairman McBrearty: Exhibits 22 and 23 are received subject to the objection that they are not relevant to matters now before the Commission—I should say, are not relevant to the determination of matters now before the Commission.

Mr. Jennings: And not material evidence.

Mr. Dyer: This is Exhibit 24.

(A document was then marked Exhibit No. 24.)

Mr. Dyer: Exhibit 24 is the application of the Panhandle Eastern Pipe Line Company for admission to do business in the state of Michigan.

Mr. Jennings: No objection to that.

Chairman McBrearty: It will be received.

Mr. Dyer: This will be Exhibit No. 25.

(A document was then marked Exhibit No. 25.)

Mr. Dyer: Exhibit 25 is a letter withdrawing the protest which accompanied the filing of the application, Exhibit No. 24.

Mr. Jennings: There is no objection to that.

Chairman McBrearty: It may be received.

Mr. Dyer: This will be Exhibit 26.



[fol. 312] (A document was then marked Exhibit No. 26.)

Mr. Dyer: Exhibit No. 26 is a copy of the gas contract between the Panhandle Eastern Pipe Line Company, and Consumers Power Company, dated April 30, 1941.

Mr. Jennings: I object to that as not being material to any issue in this case.

Chairman McBrearty: Exhibit No. 26 is received subject to the objection.

Mr. Dyer: Will you mark this as Exhibit 27?

(A document was then marked Exhibit No. 27.)

Mr. Dyer: Now, referring to the stipulation of fact, Paragraph 28-L, on page 23, which provides that copies of various applications made by Panhandle Eastern and Albion Gas Light Company, and Albion Malleable Iron Company, to both the Federal Power Commission, and the Michigan Public Service Commission, all pleadings, the withdrawal notices, the supplement to the withdrawal, and so forth, may be admitted in evidence.

Mr. Jennings: I objected to it on the ground of immateriality to any issue in this case.

Chairman McBrearty: That is Paragraph L of what page?

Mr. Dyer: Page 23.

Chairman McBrearty: Paragraph L of Paragraph 28, which appears on page 23 of the stipulation of fact, is received subject to the objection.

Mr. Dyer: Exhibit No. 27 is a copy of the gas contract between Panhandle Eastern Pipe Line Company and the Albion Gas Light Company, dated July 7, 1942.

Mr. Jennings: The same objection to Exhibit No. 27, as to the materiality, as I made to other similar exhibits.

Chairman McBrearty: The same ruling.

[fol. 313] Mr. Dyer: Exhibit No. 28 is the application of the Panhandle Eastern Pipe Line Company to the Federal Power Commission, dated December 10, 1942, with reference to the Albion Gas Light Company contract.

Mr. Jennings: Same objection.

Chairman McBrearty: The same ruling.

(A document was then marked Exhibit No. 28.)

Mr. Dyer: Asking for a certificate of convenience and necessity, Docket G-437. We do not have that here to pre-

sent now, but it is stipulated that it may be filed when obtained.

Chairman McBrearty: The same objection and the same ruling.

Mr. Dyer: Exhibit 29 would be the order of the Federal Power Commission entered on Application No. 27, the order being entered March 27, 1943, and that will be filed later under the stipulation.

Mr. Jennings: The same objection.

Chairman McBrearty: The same ruling.

(A document was then marked Exhibit No. 30.)

Mr. Dyer: Exhibit 30 is a copy of a contract between the Panhandle Eastern Pipe Line Company and the Albion Malleable Iron Company, dated December 30, 1943.

Mr. Jennings: Same objection.

Chairman McBrearty: The same ruling.

Mr. Dyer: Exhibit No. 31 is a copy of the application of Panhandle Eastern Pipe Line Company to the Federal Power Commission, in Docket G-521, dated January 28, 1944, re: Service to the Albion Malleable Iron Company. That will be filed later under the stipulation, and the exhibit number reserved for it.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 32.)

[fol. 314] Mr. Dyer: Exhibit No. 32 is a copy of the petition of the Panhandle Eastern Pipe Line Company, filed January 27, 1944, to construct and operate a line to connect with the Albion Malleable Iron Company.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 33.)

Mr. Dyer: Exhibit 33 is a certified copy of the petition of the Albion Malleable Iron Company, dated January 21, 1944, for approval and right to construct and operate the line set forth in the petition, Exhibit No. 32.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 34.)

Mr. Dyer: Exhibit 34 is a letter dated March 10, 1944, signed by Panhandle Eastern Pipe Line Company, by Clayton F. Jennings, its attorney, withdrawing the application or petition dated January 27, 1944.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 35.)

Mr. Dyer: Exhibit 35 is a letter dated March 15, 1944, by the Albion Malleable Iron Company, by Clayton F. Jennings, one of its attorneys, withdrawing the Albion Malleable's application, Exhibit No. 33.

Mr. Jennings: Same objection.

Chairman McBrearty: The exhibit will be received subject to your objection.

Mr. Dyer: Exhibit No. 36 is a letter from the Panhandle Eastern Pipe Line Company, withdrawing its application to the Federal Power Commission, re: Albion Malleable Iron Company. That will have to be supplied later.

Mr. Jennings: Same objection.

[fol. 315] Chairman McBrearty: The same ruling.

(A document was then marked Exhibit No. 37.)

Mr. Dyer: Exhibit No. 37 is a letter signed by the Panhandle Eastern Pipe Line Company, dated—I do not see it stamped; but it was received by the Federal Power Commission March 18, 1944, supplementing its withdrawal of the application referred to in the preceding letter.

Mr. Jennings: Same objection.

Chairman McBrearty: The same ruling.

(A document was then marked Exhibit No. 38.)

Mr. Dyer: Exhibit 38 is a copy of the industrial gas contract, dated January 4, 1943, between Panhandle Eastern Pipe Line Company and Michigan Seamless Tube Company.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 39.)

Mr. Dyer: Exhibit No. 39 is an application to the Federal Power Commission, by the Panhandle Eastern Pipe Line Company, dated March 18, 1943, in re: Michigan Seamless Tube Company line.



Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 40.)

Mr. Dyer: Exhibit No. 40 is the order of the Federal Power Commission in response to the petition, Exhibit 39.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 41.)

Mr. Dyer: Exhibit No. 41 is a copy of the application of the Panhandle Eastern Pipe Line Company to the Michigan Public Service Commission, re: Application for right to construct a gathering line to connect with the lines of the Continental Oil Company.

[fol. 316] Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A document was then marked Exhibit No. 42.)

Mr. Dyer: Exhibit 42 is the order based upon the application marked Exhibit 41.

Mr. Jennings: Same objection.

Chairman McBrearty: Same ruling.

(A map was then marked Exhibit No. 43.)

Mr. Dyer: Exhibit No. 43 is a map of the service area served by the Michigan Consolidated Gas Company, showing the location of its service lines.

It is stipulated between counsel, as I understand it, that this map may be received in evidence.

Mr. Jennings: Yes. No objection. It may be.

Chairman McBrearty: The map is received in evidence under the stipulation.

Mr. Dyer: That is Exhibit 43.

Chairman McBrearty: Yes, as Exhibit 43.

Mr. Dyer: Now, it is further stipulated in Paragraph 27, page 17 of the stipulation of fact, that either party may read into the record of these proceedings such part of the transcript of the proceedings before the Common Council of the City of Detroit, held February 21, 22 and 23, and such parts of the transcript of proceedings before the Federal Power Commission in Docket G-210, as they may deem material to this proceeding.

Chairman McBrearty: You refer to the—

**Mr. Dyer: Town Hall.**

**Chairman McBrearty: Town Hall, in February of 1945, don't you, Mr. Dyer?**

**Mr. Dyer: Yes, February 21, 22 and 23, 1945.**

**Chairman McBrearty: Yes.**

**Mr. Dyer: At a meeting of the Common Council, held in the City of Detroit, on February 21, 22 and 23, 1945, there [fol. 317] were present the Honorable Charles E. Dorais, Chairman; Honorable Frank Cody; Honorable William A. Comstock; Honorable William G. Rogell, and Honorable Eugene I. Van Antwerp, members of the Council;**

**There were also present, Mr. William E. Dowling, Corporation Counsel, and Mr. James H. Lee, Assistant Corporation Counsel.**

**There were also present Mr. Henry A. Montgomery, Mr. John W. Batten, and Mr. Henry Fink, representing the Michigan Consolidated Gas Company.**

**There were also present Mr. William G. Maguire, and Mr. Edward Buddrus. I might say that Mr. William G. Maguire is Chairman of the Board, and Chief Executive Officer of the Panhandle Eastern Pipe Line Company. There were present Mr. Edward Buddrus, President of the Panhandle Eastern Pipe Line Company; Mr. John S. L. Yost, General Attorney for the Panhandle Pipe Line Company; Mr. George Ballard, in charge of the Detroit office, and Mr. J. E. Ryan, Rate Engineer.**

**The proceedings opened by Mr. Dowling, Corporation Counsel, stating the purposes of the meeting, and proceeding to read a letter which had been received by the Mayor of the City of Detroit, signed by Mr. William G. Maguire, Chairman of the Board and Chief Executive Officer of the Panhandle Eastern Pipe Line Company. This letter was read into the record as follows (reading):**

**[fol. 318] "The Honorable Edward J. Jeffries, Mayor of the City of Detroit, Detroit, Michigan.**

**SIR:**

**We believe the City of Detroit is entitled to know the position of Panhandle Eastern Pipe Line Company with respect to the proposed \$70,000,000 natural gas pipe line to Detroit sponsored by the American Light and Traction Company. In all of our discussions with the officials of the City of Detroit, they have made it**

clear that their sole interest is to obtain an adequate gas supply at the lowest possible cost to the citizens of Detroit. Panhandle Eastern has been and is willing to cooperate fully in the attainment of that objective. We do not believe it can be accomplished by construction of the pipe line proposed by American Light and Traction Company.

It appears that such pipe line is to originate in the same gas fields from which Panhandle Eastern now secures its gas and that its route will be such as to allow delivery of gas in Wisconsin. Panhandle Eastern's line follows a direct route from the same field to the City of Detroit and is, in effect, a double line, being completely looped for 950 miles. A substantial part of Panhandle Eastern's system has been installed during periods of relatively low construction prices. Construction costs for the next several years will probably be such that the average unit cost of any new pipe line would be very much higher than Panhandle Eastern's pipe line. Furthermore, operating expenses on the double pipe line of Panhandle Eastern [fol. 319] will be at a lower unit cost than those of a single pipe line.

The matter of natural gas reserves is of paramount importance. Panhandle Eastern now has gas reserves of approximately four trillion cubic feet, over 50 per cent of which it owns directly and the remainder through favorable gas purchase contract. We seriously doubt that comparable gas reserves can be obtained on such favorable terms. Of course, under the Natural Gas Act, the Federal Power Commission must formally approve the feasibility of the entire project in general and the adequacy of the gas reserves in particular before American Light and Traction Company can proceed with its proposed line. The Federal Power Commission will conduct a public hearing and American Light and Traction Company will have the burden of showing its ability to render adequate service at lower cost than Panhandle Eastern.

As the chief reason for building the proposed line, its promoters have stated that Panhandle Eastern has refused to enter into a contract with Michigan Consolidated Gas Company for a greater supply of gas than that covered by the present contract. Such is not the fact. Panhandle



Eastern is willing to supply the natural gas requirements of the City of Detroit. We feel that a joint responsibility rests upon this Company and Michigan Consolidated Gas Company to serve gas to the consumers of Detroit at the lowest possible rate. To accomplish this, there must be cooperation between the two companies and a mutual recognition of their respective problems. Panhandle Eastern [fol. 320] must invest a substantial sum of money for increased capacity of its facilities. In order that this increased capacity can operate economically and efficiently, Michigan Consolidated Gas Company should make some provision for the elimination of certain presently existing operating conditions which make it exceedingly costly and difficult for Panhandle Eastern to maintain sufficient gas deliveries.

We believe that, with cooperation, Panhandle Eastern could readily provide the pipe line capacity and facilities for supplying the City of Detroit its natural gas requirements at a rate lower than could possibly be obtained from any other company.

In order to assure the domestic consumers of Detroit the lowest possible gas rate, Panhandle Eastern should be in a position to operate its pipe line at full capacity during the summer months. This can be done through the direct sale of gas on an interruptible basis to large industrial customers in and around Detroit. In this connection, Panhandle Eastern stands ready and willing to pay the City of Detroit a proper consideration for the right to lay and operate its pipe line along the streets and alleys of Detroit to the plants of such large industrial customers. Natural gas fuel would be available to such industries at very favorable rates compared with those prevailing at Detroit now.

In conclusion, we repeat that it is our desire to cooperate to the fullest extent in providing an adequate supply of gas for the City of Detroit. We feel, however, that it should be recognized that this company must conduct its affairs so as [fol. 321] to provide its security holders safety and a fair return on their investment and risk.

Very truly yours, W. G. Maguire, Chairman of the Board."

Following the reading of this letter, testimony was taken, as appears on pages 16 and 17 of the transcript, Mr. William

G. Maguire at that point in the proceedings making a statement which reads as follows (reading):

"In addition to what I have already said, Panhandle is ready, able and desirous of selling gas to your industries directly at a lower price than they are now paying; and, in addition, to pay to the City of Detroit a reasonable rental for the use of any streets necessary for crossings or rights of way.

To this end we are ready to sit down with representatives of your city and of local industries to work out a program for the post-war period."

Subsequent to this statement, Mr. Maguire was asked by Mr. Dowling the following question, on page 19 of the transcript, the question, and Mr. Maguire's answer being as follows (reading):

"Mr. Dowling: And you knew what you were talking about when you wrote to the Mayor and told him that by virtue of this lack of cooperation you could not get in and do all you wanted to do for Detroit?"

Mr. Maguire: That is right. We wanted to sell industrial gas. We wanted to sell it directly, to take [fol. 322] advantage of competitive fuel conditions, but we got no cooperation of any kind or character from the Michigan Consolidated Gas Company."

Later on in the transcript, at pages 102 and 103, Mr. Buddrus, the President of the Panhandle Eastern Pipe Line Company, was examined by Mr. Lee, Assistant Corporation Counsel of the City of Detroit, the questions and answers being as follows, beginning on page 102 (reading):

"Mr. Lee: Some of these you sell direct, industrialists, with the branch pipe line off the main pipe line?"

Mr. Buddrus: Yes, that is correct.

Mr. Lee: How many of those are sold direct, on your entire system?

Mr. Buddrus: About 22 or 23, I would say.

Mr. Lee: And you, as well as all of the other natural gas companies, claim that you are not subject to regulation by any agency, federal or state, where you are selling gas direct to a customer, but you are only subject to regulation where you are selling gas for re-sale,

as to a distribution company reselling to the public, isn't that right?

Mr. Buddrus: That is correct.

Mr. Lee: Yes. So the more industrialists you can sell direct, without going through the medium of a distribution company, the more your business will be exempt from any regulation of any kind, Federal or state, isn't that right?

Mr. Buddrus: Well, that is what we think the law means, but under our rate case—

Mr. Lee: That is what we have up in the Supreme Court now.

Mr. Buddrus: The Federal Power Commission did not allow what we—

[fol. 323] Mr. Lee (interrupting): Now, then, is it true that about 13 per cent of your entire business is business that you claim is not subject to regulation?

Mr. Buddrus: No, not any more, Mr. Lee. We are selling about seven billion feet out of a hundred and thirteen billion feet direct.

Mr. Lee: What percentage do you now say is not subject to regulation?

Mr. Buddrus: I would say approximately six.

Mr. Lee: Six per cent?

Mr. Buddrus: Yes."

Now, on page 116 of the transcript, Mr. Buddrus is still under examination by Mr. Lee, this being on February 22, 1945, and Mr. Buddrus on page 116 makes the following statement (reading):

"We have got the gas; we are in the gas business; we have got plenty of reserves. We think that there could be a combination worked out whereby we can get some direct sales in the City of Detroit, and the Michigan Consolidated can get some gas for storage for their winter peaks. It is not unsurmountable at all. If we can get our engineers together, and both sides put their chips on top of the table, it is just another engineering job, that is all it is.

Mr. Lee: But, Mr. Buddrus, when you incorporate in your negotiations direct sales to the City of Detroit, you make that as a part of your negotiation talk, is that right?



Mr. Buddrus: We have made it out here publicly.

Mr. Lee: I understand.

Mr. Buddrus: And we have told—

[fol. 324] Mr. Lee (interrupting): And you know, don't you, Mr. Buddrus, that what you propose with reference to direct sales is direct sales to industries?

Mr. Buddrus: That is correct.

Mr. Lee: Yes, and you know that the way in which you are going to reach those industries is not through the local distribution companies, the distribution system, but through a pipe line, a belt line around the city, which your company will build, if they can get the franchise from the City of Detroit, or the city would build and you would pay them for the use of it. Isn't that right?

Mr. Buddrus: Both of those plans have been suggested.

Mr. Lee: Well, now, then, just as a matter of trading, isn't it a fact that where you have a local company that is in the distribution business, that the sale of all gas in the area should be given to the local company?

Mr. Buddrus: No, that is not a fact.

Mr. Lee: And the pipe line should sell it to them, and they should go out and sell it to the customers, to all the customers, isn't that right?

Mr. Buddrus: Well, Jimmy, wait a minute.

Mr. Lee: All right.

Mr. Buddrus: Are you making the rules for the sale of gas in the United States?

Mr. Lee: No. I am saying this, that as a matter of out, as far as I am concerned anyway, from what little I have got to say on behalf of the public in this matter, that two things can be achieved; that is, first, the Panhandle can come in here and sell to the industrialists and circumvent the already established company; and, second, that when they can sell to industries, they can get from under the regulation of the Federal Power Commission by direct sales.

Now, I want to let you know in the beginning that any talk of negotiating with the Michigan Consolidated Gas Company that involves those things is out, as far as I am concerned, and I am just speaking for myself.

Isn't it a fact that the Panhandle Pipe Line Company

is engaged in a campaign of getting direct sales all over their line, so as to obviate the necessity of regulation by the Federal Power Commission? Isn't that true?

Now, we are interested in keeping regulation, because it protects the public.

Now isn't that true, Mr. Buddrus?

Mr. Buddrus: Well, certainly the policy of the Panhandle Eastern is to make the most money for its stockholders as possible; and we certainly have been trying to get direct customers.

Mr. Lee: Even though it means—

Mr. Buddrus: Now, wait a minute, Mr. Lee.

That happens to be our policy.

Now, you have made your speech; and I have made my speech.

Mr. Lee: But I want you to know that any negotiations that you say could be made between your company and the local company, why, the City's policy, so far as I am concerned, is no direct sales, because we are so tickled to have the Federal Power Commission's regulation and protection for the public consumer, that we want to keep it.

Now, along this line of direct sales, does your company make the direct sales to the Albion Malleable Iron Company at Albion, Michigan?

[fol. 326] Mr. Buddrus: That is correct.

Mr. Lee: That is correct?

Mr. Buddrus: Yes.

Mr. Lee: And in order to make those sales, do you pay a fee to the local company on the gas you sell direct?

Mr. Buddrus: That is correct.

Mr. Lee: And do you contend that because you sell direct to the Albion Malleable Iron Company industrial gas, that you are not under the regulation of the Federal Power Commission?

Mr. Buddrus: That is correct."

Then on page 122, Mr. Buddrus is still being examined by Mr. Lee, and the following testimony was given (reading):

"Mr. Lee: You heard the testimony of Mr. Maguire that the industrial sales had not been developed by the local company. Do you recall that?"

Mr. Buddrus: That is right.

Mr. Lee: Well, the local company went down and took the Great Lakes contract, 12,000,000 cubic feet a day, didn't they?

Mr. Buddrus: They might have taken the contract. I do not know as I know the fact. They have made no deliveries of gas under it.

Mr. Lee: Well, now, your company was negotiating for a long while to get the contract as a direct sale, wasn't it?

Mr. Buddrus: That is correct.

Mr. Lee: That is correct, and the contract went to the local distribution company, didn't it?

Mr. Buddrus: I understand they have a contract, but I do not know the details of it.

I don't know whether it is a fact."

[fol. 327] Now, on page 134 of the transcript, beginning with the statement by Councilman Dorais (reading):

"Councilman Dorais: I would like to have Mr. Lee restate that question about whether they would sell gas for underground storage. That is a direct simple question now.

Mr. Buddrus: Yes, we will sell gas for underground storage.

Mr. Dowling: But under certain conditions, you said?

Mr. Buddrus: That is right, yes.

Mr. Dowling: Then impose the conditions so that we may know.

Mr. Buddrus: Well, I said if we could get some direct sales here to industry.

Mr. Dowling: Well, now, wait. You cannot ask the local gas company to deny to themselves business. You are looking for business, and they are looking for business, and the public is holding the bag.

Mr. Buddrus: Well, you are putting me on the spot.

Mr. Dowling: No.

Mr. Buddrus: On one end of the trade.

Mr. Dowling: I will have the others on the spot.



Mr. Buddrus: And you are protecting the other fellow. Why can't he speak for himself?

Mr. Batten: He will.

Mr. Dowling: I will have him on the stand in a few minutes. You answer your end of it.

Mr. Buddrus: Well, I have. We want industry sales. We are willing to give them gas for repressure, and we know that with our pipe line and low unit cost Detroit is going to get gas quite cheap."

[fol. 328] Now, in Docket G-210, being Michigan Consolidated Gas Company v. Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, proceedings before the Federal Power Commission—

Mr. Jennings: What date?

Mr. Dyer: On October 20, 1941, the Panhandle Eastern was the respondent, and in the course of the hearings, Panhandle Eastern offered testimony, and on October 22, 1941, presented as a witness in its behalf Mr. G. J. Neuner, its Vice-president in charge of operations.

Mr. Neuner was duly sworn as a witness, called on behalf of the respondent, and testified, among other things, as follows, transcript page 390 (reading):

"Q. Will you state your name and your present position with the Panhandle Eastern Pipe Line Company?

A. G. J. Neuner, Vice-president in charge of operations."

On page 394, Mr. Neuner is testifying regarding the contract between Panhandle Eastern Pipe Line Company and the Consumers Power Company, dated April 30, 1941, which was negotiated in the late winter and spring of 1941. He testifies as follows, which is on page 399. (reading):

"A. We were verbally promised by Consumers Power Company that if and when this system of pipe line was completed, that they had a very sizeable power plant, fuel load, for which they would agree to buy gas from our company during off-peak periods."

[fol. 329] And later on the same page (reading):

"One of those power plants is located approximately 12 miles east of the north and terminus of our north line. That is a very sizeable power plant there. There are a total of four power plants involved, one at Zil-

waukee, immediately north of Saginaw. I believe there are either one or two at Kalamazoo, and one or two at Battle Creek, Michigan."

And on page 400 (reading):

"There is a verbal understanding that the contract will be made to render service if, as and when we desire it, in amounts to about five billion cubic feet of gas per year."

And on page 399 (reading):

"Further than that, some time prior to the time these negotiations had taken place, we had some very serious negotiations with the Dow Chemical Company, at Midland, Michigan, for the supply of dump gas."

And on page 400 (reading):

"I personally carried on the negotiations with them. They are in a position to handle as much as 40,000,000 cubic feet of gas per day, and it is our expectation, and was at the time this contract was negotiated, with Consumers Power Company, concerning the building of these lines, that at some time in the future the contract with the Dow Chemical Company will actually be executed."

[fol. 330] Continuing on page 403 (reading):

"The contract we had under negotiation with the Dow Chemical Company provided for an annual load of ten billion cubic feet."

And further, on page 405 (reading):

"The power house load that we talked about verbally which did not mean a year-round service, but a dump or floating service, was an aggregate total of five billion cubic feet."

And on page 476 (reading):

"The power plants at Zilwaukee are owned by Consumers. That would be a direct sale to Consumers for use, and that price, while it has not been negotiated, would be a direct price to the Consumers itself."

Continuing on the same page (reading):

"Answering your question with respect to Midland, we expect to handle that business, if possible, through the distributing company, since the Dow plant at Midland is located within the service area of that Company. However, that has not been agreed upon. Our negotiations in the past have been directly with the Dow Chemical Company for direct sale."

On page 525, the date of this testimony being October 23, 1941, Mr. Neuner further testified (reading):

"Yes, we have oral agreements with the Consumers Power Company, and we have actually had an executed contract with the Dow Chemical Company which, however, has not gone into effect, and has terminated at this time."

[fol. 331] Further, on page 477 (reading):

"We had a price negotiated with the Dow people, yes, but we have not negotiated the price with the Consumers; but it was understood in our verbal negotiations that the price would be the offset to other fuel and we calculate that price to vary depending upon the location of the plant, between around 13½ to 14 cents to 17 or 18 cents. The Dow price was 15 cents."

Mr. Jennings: I object to the materiality of everything read in from the City Council proceedings; and from that which was just completed before the Federal Power Commission, and move that it all be stricken from the record.

Chairman McBrearty: All of the testimony read into the record will be received, subject to the objection of counsel for Panhandle Eastern Pipe Line Company.

Isn't there some provision made in your stipulation, Mr. Jennings, as to the type of testimony that was just read into the record?

Mr. Jennings: Yes.

Mr. Dyer: I beg your pardon?

Mr. Jennings: We mention this type of testimony in the stipulation, I think.

Mr. Dyer: Yes.

Mr. Riggs: That is on page 17, Paragraph 27 of the stipulation of fact.



Mr. Jennings: The stipulation of fact refers to certain exhibits attached to it. I think you have them assembled here.

Mr. Dyer: Yes.

Chairman McBrearty: That is it. Thank you.

Mr. Dyer: Now, I would like to offer in evidence at this time the exhibits attached to the stipulation of fact, Ex-[fol. 332] hibit 1 being a map of the transmission line of the Panhandle Eastern Pipe Line Company.

Mr. Jennings: No objection.

Chairman McBrearty: It will be received.

Mr. Dyer: Exhibit 2 are the rate schedules of the Panhandle Eastern Pipe Line Company applicable to the Michigan Consolidated Gas Company, consisting of the gas contract between the Panhandle Eastern Pipe Line Company, and the Detroit City Gas Company, dated August 31, 1935, and four supplements thereto, dated respectively, June 2, 1936, December 30, 1936, September 29, 1939, and June 29, 1940.

The rate schedules, as I understand them, in addition to this contract and supplements, consist of of supplement No. 5 to the rate schedule No. 13, being Panhandle's rate schedule GD-1, RD-2, and Paragraph 3, entitled, "Measurements," Paragraph 4 entitled, "Measuring Equipment," of general terms and conditions. I would like to introduce these in evidence.

Mr. Jennings: No objection.

Chairman McBrearty: They will be received. Have they been marked, Mr. Dyer?

Mr. Dyer: They have all been marked. Exhibit 3 attached to the stipulation of fact is a copy of the industrial gas contract, dated August 20, 1945, executed October 20, 1945, between the Panhandle Eastern Pipe Line Company and the Ford Motor Company.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer. Exhibit 4, I think, is the letter written by the Federal Power Commission, December 6, 1945, to the Panhandle Eastern Pipe Line Company, referred to in Paragraph 11, page 10 of the stipulation.

Mr. Jennings: No objection.

[fol. 333] Chairman McBrearty. That letter will be received in evidence.

Mr. Dyer: Exhibit 5 is a copy of letter by Panhandle Eastern Pipe Line Company, signed by W. G. Maguire, dated December 12, 1945, addressed to the Secretary of the Federal Power Commission.

Mr. Jennings: No objection.

Chairman McBrearty: It is received.

Mr. Dyer: Exhibit 6 attached to the stipulation of fact is a copy of the telegram of the Michigan Public Service Commission to the Federal Power Commission, dated December 12, 1945.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer: Exhibit 7 is a copy of telegram of the Michigan Consolidated Gas Company to the Federal Power Commission, dated December 12, 1945.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer: Exhibit 8 is a copy of the orders entered by the Federal Power Commission, December 18, 1945, in the matter of Panhandle Eastern Pipe Line Company, et al, Docket Nos. G-661 and G-688.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received, the order of the Federal Power Commission may be received.

Mr. Dyer: Exhibit 9 is a true and correct copy of the application to the Federal Power Commission, in Docket G-693.

Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer: Exhibit No. 10 is a copy of the existing contract between the Ford Motor Company and the Michigan Consolidated Gas Company, dated May 9, 1945, together with letter of Transmittal dated December 28, 1944.

[fol. 334] Mr. Jennings: No objection.

Chairman McBrearty: It may be received.

Mr. Dyer: Exhibit 11 is an agreement dated March 30, 1944, between the Panhandle Eastern Pipe Line Company and the Albion Gas Light Company.

Mr. Jennings: I object to that as immaterial.

Chairman McBrearty: The exhibit is received subject to the objection.

Mr. Dyer: Exhibit 12 is a map showing the transmission lines and service area, in Albion Michigan, particularly

with reference to the service to the Albion Malleable Iron Company.

Mr. Jennings: I object to that as immaterial, and because we claim that everything referring to Albion is immaterial.

Chairman McBrearty: The same ruling as previously.

Mr. Jennings: Is that all?

Mr. Dyer: I think that concludes the introduction of testimony, so far as the Michigan Consolidated Gas Company is concerned.

Chairman McBrearty: Will there be any testimony offered in rebuttal, Mr. Jennings?

Mr. Jennings: No, no testimony on rebuttal.

Chairman McBrearty: The case is submitted.

[fol. 335]

#### STIPULATION OF FACTS

(Filed with Michigan Public Service Commission, February 15, 1946)

It is agreed by and between the parties to this stipulation that on January 17, 1946, Panhandle Eastern Pipe Line Company (hereinafter called "Panhandle") appeared in these proceedings specially, for the purpose of making its motion to dismiss filed that day, and that this stipulation is made and entered into to supply the Commission with such facts as it may consider necessary for the purpose of ruling on the said motion of Panhandle to dismiss these proceedings, and, further, that Panhandle asserts that any action or order of the Michigan Public Service Commission purporting to regulate, interfere with, or otherwise affect the sale and delivery by Panhandle to Ford Motor Company and other industrial consumers of natural gas transported by Panhandle in interstate commerce would unduly and unlawfully burden interstate commerce in violation of Article I, Section 8 (3) of the Constitution of the United States, and that, if Section 22.131 and 22.141 of the Michigan Statutes Annotated or any other Michigan statute is construed to authorize said commission to regulate, interfere with or otherwise affect such sale and delivery, such statutes as so construed are unconstitutional and void because in violation of Article I, Section 8 (3) of the Constitution of the United States; and Panhandle denies:

(a) That it sells natural gas in Michigan except as a part of interstate commerce;



(b) that it is engaged in intrastate commerce in the State of Michigan;

[fol. 366] (c) that it has transacted or is transacting within the State of Michigan any business as a public utility within said state;

(d) that the sale and delivery of natural gas transported by it in interstate commerce directly to an industrial consumer is subject to the jurisdiction of the Michigan Public Service Commission;

(e) that said commission has any right, power, or authority to institute this proceeding against it;

(f) that it is under any obligation to comply with any Michigan statute or any order of said commission relating to public utilities within the State of Michigan; and

(g) that its business or any part thereof is local in character and subject to regulation by said commission.

## II

It is agreed by and between the parties to this stipulation that, by entering into this stipulation as to the facts relating to the various matters specified in the order issued herein by the Michigan Public Service Commission on December 21, 1945, Panhandle does not waive or concede and will not be charged with having waived or conceded, any of the matters hereinabove asserted or denied by it.

## III

It is further agreed by said parties that each party hereto reserves the right to introduce further evidence herein, including evidence to supplement and explain, but not to contradict, the facts herein stipulated.

[fol. 337]

## IV

It is further agreed between the parties hereto (i) that, by the making of this stipulation of facts, no party hereto waives any objection it may have to the relevancy or materiality of any fact herein stipulated, or its right to take and preserve an exception to any ruling by the Michigan Public Service Commission on any objection by such party to the relevancy or materiality of such fact, and (ii) that any party hereto who has any objection or objections to the relevancy or materiality of any fact or facts stated in

this stipulation shall make such objection or objections orally on the record or in writing filed with said Commission in this cause at the time of filing this stipulation, and any such objection not so taken shall be deemed to have been waived.

## V

Subject to the foregoing agreements, it is hereby agreed by and between the parties hereto that this stipulation, when received in evidence in this cause, shall have the same force and effect as though the matters hereinafter set forth had been proved by competent evidence on a hearing in this cause before the Commission. It is further agreed that, in the event the motion to dismiss is overruled and Panhandle thereafter appears generally, this stipulation may be received in evidence with like force and effect in any further proceedings in this cause.

## VI

The facts, herein stipulated subject to the foregoing agreements, are as follows:

1. Panhandle is a corporation organized and existing under the laws of the State of Delaware. It was domestic- [fol. 338] cated in the State of Michigan on July 21, 1942, and is, at this date, a foreign corporation in good standing in the State of Michigan. A certified copy of its certificate of admission may be received in evidence.

2. The principal executive offices of Panhandle are located at 1221 Baltimore Avenue, Kansas City 6, Missouri, and 135 South LaSalle Street, Chicago 3, Illinois. The present statutory office of Panhandle in Michigan is 1400 Olds Tower Building, Lansing 8, Michigan, and Panhandle maintains an office occupied by two employees at 1316 United Artists Building, Detroit, Michigan. None of the books of account or operating records of Panhandle are, or have at any time been, kept at said statutory office in Michigan or at any other office or place in Michigan. All such books of account and operating records of Panhandle pertaining to its business are kept and maintained at one or the other of its aforesaid principal executive offices outside of the State of Michigan. All of the operations and business of Panhandle, including its operations and business in the State of Michigan, are directed, managed, and

controlled from the aforesaid principal executive offices outside of the State of Michigan.

3. Panhandle owns and operates an integrated natural gas pipe line system situated in the States of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. Panhandle is a "natural-gas company," as defined in the Natural Gas Act (15 U. S. C. Sec. 717 et seq.). It purchases and produces natural gas in the States of Texas and Kansas and purchases natural gas in the State of Oklahoma, and is engaged in the transportation of such gas through its transmission lines for sale (a) for resale for ultimate public consumption for domestic, commercial, [fol. 339] industrial, and other uses, and (b) directly to industries and to others for their own use. Its main transmission line extends approximately 1,160 miles from the Amarillo Gas Field in the Texas Panhandle and the Hugoton Gas Field in southwestern Kansas through the States of Oklahoma, Kansas, Missouri, Illinois, Indiana, and the northwest corner of Ohio, into the State of Michigan to Melvindale, near Detroit, Michigan. From said main transmission line, lateral or branch lines extend to interconnections with gas lines of various distributing companies or to industrial plants. Said gas fields and transmission line system are shown on the map which is attached to this stipulation as "Exhibit 1" and is hereby made a part hereof.

4. In 1941 Panhandle constructed a lateral line from the main transmission line of Michigan Gas Transmission Corporation into the County of Washtenaw, Michigan, and two branches extending therefrom, one to Zilwaukee, in the eastern side of the state, and one to Kalamazoo, in the western side of the state. In 1943 Panhandle, by purchase of the properties of the Michigan Gas Transmission Corporation (a wholly owned subsidiary after February 6, 1942), extended its main transmission pipe line into the State of Michigan. As to all the pipe lines built in the State of Michigan, approval of the Michigan Public Service Commission (or its predecessor, Michigan Public Utilities Commission) was obtained. Proof was received as to laying the pipe and the manner of crossing highways and other public properties. All applications and orders pertaining to such approvals, when properly identified, may be offered



and received in evidence by reference to the originals thereof as appearing in the files of the Commission.

[fol. 340] 5. Except as the facts stated in paragraphs 30 and 31 hereof may be held to constitute an exception, all of the gas sold by Panhandle in the State of Michigan has been, and is now, transported through its main transmission line, shown on Exhibit 1, into the State of Michigan. During the year 1945, the total amount of gas sold by Panhandle in Michigan was approximately 39,160,000 M.c.f., of which approximately 160,000 M.c.f. were sold directly to two industrial consumers, namely, Albion Malleable Iron Company, located at Albion, Michigan, and Michigan Seamless Tube Company, located at South Lyon, Michigan, and approximately 39,000,000 M.c.f. were sold for resale for ultimate public consumption to the following distributing utilities: Albion Gas Light Company, located at Albion; Battle Creek Gas Company, located at Battle Creek; Citizens Gas Fuel Company, located at Adrian; National Utilities Company, located at Monroe; Consumers Power Company, serving various communities in Michigan; and Michigan Consolidated Gas Company, serving the cities of Ann Arbor and Detroit, and contiguous territory. A copy of the contract or contracts with any of the aforesaid customers may be offered and received in evidence.

6. Gas is sold to Albion Malleable Iron Company and Michigan Seamless Tube Company on an interruptible basis. That is to say, in each instance the contract with the customer provides that Panhandle shall have the right to curtail or completely interrupt deliveries of gas when, in its judgment, "such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly from the pipe line system of Seller under classifications contemplating an uninterruptible supply of gas." Classifications contemplating an uninterruptible [fol. 341] supply cover sales to distributing utilities on a firm basis for resale largely for domestic and commercial use. Panhandle also sells gas to utilities on an interruptible basis for resale to industry. Panhandle has at present an interruptible industrial load over its entire system of approximately 59,500 M.c.f. per day, of which approximately 14,500 M.c.f. is sold to distributing utilities for resale to industrial plants on an interruptible basis. Panhandle's total interruptible industrial load over its entire

system comprises approximately 15.5% of the nominal daily sales capacity of its main line system, which is 383,000 M.c.f.

7. During the year 1945, Panhandle's total gas sales amounted to 120,157,951 M.c.f., of which approximately 5.57%, namely 6,691,677 M.c.f., were sold directly by Panhandle to 27 industrial customers, all on an interruptible basis. Of the total revenue derived by Panhandle in 1945 from gas sales, amounting to \$23,020,342.69, approximately 6.39% thereof, namely, \$1,471,608.36, was derived from direct industrial sales.

8. Gas purchased from Panhandle by Michigan Consolidated Gas Company for resale in the Detroit area is sold by Panhandle under its rate schedule filed with the Federal Power Commission designated F. P. C. Rate Schedule No. 12, as supplemented by five supplements thereto. Said rate schedule and the five supplements thereto, consist of (a) Contract dated August 31, 1935, between Panhandle and Detroit City Gas Company, (b) Supplemental Gas Contract dated June 2, 1936, between Panhandle and Detroit City Gas Company, (c) Agreement dated December 30, 1936, between Panhandle and Detroit City Gas Company, (d) Third Supplemental Contract dated September 29, 1939, between Panhandle and Michigan Consolidated Gas Company, (e) Fourth Supplemental Contract dated June 29, 1940, between Panhandle and Michigan Consolidated Gas Company, and (f) Panhandle's Rate Schedule Gd-1 and Rd-2 and paragraph three entitled "Measurements" and paragraph four entitled "Measuring Equipment" of Panhandle's general terms and conditions applicable to sales in Michigan, true and correct copies of which are attached hereto and made a part hereof as "Exhibit 2."

9. A contract dated August 20, 1945, executed by the officers of the Ford Motor Company (hereinafter called "Ford") on September 28, 1945, and by the officers of Panhandle on October 20, 1945, was entered into. A true and correct copy of said contract, marked "Exhibit 3," is attached hereto and made a part hereof.

10. To carry out its contract with Ford, the only facility that Panhandle is required to construct is a measuring and regulator station to be connected with Panhandle's main transmission line at a point on said line, the approximate

location of which is indicated on Exhibit 1. A pipe line to be constructed, owned, and operated by Ford, will connect with the outlet side of the said measuring station. The said pipe line has been presently constructed to the westerly line of the Ford property adjoining the Michigan Central right-of-way.

11. On December 6, 1945, the Federal Power Commission sent a letter to Panhandle with respect to the transportation and sale of natural gas to Ford. A true and correct copy of said letter, marked "Exhibit 4," is attached hereto and made a part hereof.

12. On December 12, 1945, Panhandle sent a letter to the Federal Power Commission in response to the aforesaid [fol. 343] letter of December 6, 1945. A true and correct copy of said letter, marked "Exhibit 5," is attached hereto and made a part hereof.

13. On December 12, 1945, Michigan Public Service Commission sent a telegram to the Federal Power Commission concerning the sale of natural gas to Ford. A true and correct copy of said telegram, as appearing in the files of this Commission, may be attached hereto as "Exhibit 6," and made a part hereof.

14. On December 12, 1945, Michigan Consolidated Gas Company sent a telegram to the Federal Power Commission concerning the sale of natural gas to Ford. A true and correct copy of said telegram, marked "Exhibit 7," is attached hereto and made a part hereof.

15. On December 18, 1945, the Federal Power Commission issued an order directing Panhandle to appear at a public hearing in Washington, D. C., on January 7, 1946, then and there to show cause as required by said order. A true and correct copy of said order to show cause, marked "Exhibit 8," is attached hereto and made a part hereof. The said hearing before the Federal Power Commission commenced January 7, 1946, and adjourned on January 12, 1946, sine die.

16. On January 10, 1946, Panhandle filed with the Federal Power Commission an application wherein it set forth the essential facts pertaining to its sale of gas to Ford under its contract of October 20, 1945, and prayed that the Federal Power Commission rule that no certificate of public convenience and necessity under the Federal Natural Gas Act was required or, in the alternative, grant such



certificate and any other authorization required under the Natural Gas Act in connection with Panhandle's sale of [fol. 344] gas to Ford. A true and correct copy of said application, marked "Exhibit 9," is attached hereto and made a part hereof.

17. The gas to be sold by Panhandle to Ford under its contract, Exhibit 3 hereto, will be used by Ford at its Dearborn plant in the manufacture of large quantities of automobiles, tractors, and other similar products and parts therefor for distribution throughout the United States. During the year 1941, the last prewar year of production at the Dearborn plant, Ford produced approximately 931,491 automotive units at said plant, of which approximately 67,429 (7.4%) were sold within the State of Michigan and approximately 874,062 (92.6%) were sold outside the State of Michigan. Ford estimates that during the year 1946 it will produce at its Dearborn plant between 750,000 and 1,000,000 automotive units, and it is expected that the sales within and without the State of Michigan will follow the pattern of 1941.

18. Michigan Consolidated Gas Company (hereinafter called "Michigan Consolidated") is a corporation organized and existing under and by virtue of the laws of the State of Michigan, and is a public utility engaged in the business of supplying natural and artificial gas to the public for domestic, commercial, and industrial use within certain districts in the State of Michigan. On October 31, 1945, the Federal Power Commission issued an order in its Docket No. G-353 finding Michigan Consolidated to be a "natural-gas company" within the meaning of the Natural Gas Act, and issuing a certificate of public convenience and necessity to Michigan Consolidated under the "grandfather" provision of Section 7(c) of the Natural Gas [fol. 345] Act, as amended. (Title 15 U. S. C., Section 717, et seq.) On December 28, 1945, the Federal Power Commission, upon an application of Michigan Consolidated, issued an order granting a rehearing of its said order dated October 31, 1945, and staying the effect of said order pending a determination of the matter upon rehearing. No date for such rehearing has yet been fixed by the Federal Power Commission.

19. One of the districts served by Michigan Consolidated comprises the cities of Detroit, Hamtramck, Highland

Park, Dearborn, River Rouge, Grosse Pointe, Melvindale, Wyandotte, Lincoln Park, and twenty-two contiguous or adjacent villages or townships in Wayne County, said territory being commonly known and hereinafter referred to as the "Detroit district."

20. In the following municipalities within the Detroit district Michigan Consolidated holds franchises, each for a stated term of thirty years or for such term as may be lawful, granted by the municipality and approved by the electorate, in accordance with the requirements of the present constitution of the State of Michigan, such franchises extending by their terms to the respective expiration dates indicated: Village of Belleville, (1957); Village of Dearborn (now City of Dearborn), (1955); Village of Flat Rock, (1957); Village of Grosse Pointe Shores, (1957); Village of Lochmoor (now Village of Grosse Pointe Woods), (1957); Village of Inkster, (1958); Village of Rockwood, (1957); Township of Berlin, (1957); Township of Brownstown, (1957); Township of Canton, (1957); Township of Dearborn, (1957); Township of Redford, (1956); Township of Romulus, (1957); Township of Taylor, (1957); Township of Van Buren, (1957).

[fol. 346] 21. In the City of Detroit and all municipalities within the Detroit district other than those mentioned in paragraph 20 above, no franchise for a term of years approved by the electorate, as required by the present constitution of Michigan, has been granted to Michigan Consolidated, and the consent of the municipalities to the occupancy of the streets by Michigan Consolidated is terminable at the will of the municipalities.

22. The regulations and schedules of rates of Michigan Consolidated are on file with the Michigan Public Service Commission and it has obtained all requisite authority and approval under the laws of the State of Michigan to carry on its business within the state.

23. Michigan Consolidated obtains its entire supply of natural gas, furnished by it to its consumers within the Detroit district, from Panhandle, taking delivery thereof at the terminus of Panhandle's main transmission line in Melvindale, Michigan. Some of the gas furnished such consumers is manufactured by Michigan Consolidated at Detroit, Michigan. Among the industrial consumers served by Michigan Consolidated within the Detroit district is

Ford, which purchases natural gas under a contract dated May 9, 1945, providing for deliveries up to a maximum of 15,000,000 cubic feet per day for use at its Dearborn plant. Ford also purchases additional gas from Michigan Consolidated within the Detroit district. The gross revenue derived by Michigan Consolidated from sales of gas to Ford at its Dearborn plant under the above contract during the year 1945 amounted to \$111,631, and from the additional sales amounted to \$193,466. A true copy of said contract, marked "Exhibit 10," is hereto attached and made a part hereof. The total gross revenue of Michigan Consolidated from all sources during the year 1945 amounted to \$31,483, [fol. 347] 590 of which amount \$25,818,325 were from the Detroit District only. An exhibit showing the quantities sold Ford Motor Company during the years 1942, 1943, and 1944 under a previous contract, together with the revenues derived therefrom, may be offered and received in evidence.

24. Delivery of gas sold by Michigan Consolidated to Ford for use at its Dearborn plant is made at a point near the terminus of Panhandle's transmission line at Melvindale, Michigan, and Ford transports the gas so purchased from that point to its Dearborn plant through a twelve inch line owned by Ford. The said twelve inch line is substantially parallel to the line which Ford is required to construct and operate in order to receive deliveries from Panhandle under Exhibit 3 hereto.

25. Panhandle has not, in connection with the proposed furnishing and sale by it of natural gas to Ford, filed with the Michigan Public Service Commission, or obtained its approval of, any schedule of rates, nor has Panhandle obtained, or made application for, any certificate of public convenience and necessity or other permit or authority from the Michigan Public Service Commission.

26. Panhandle Eastern Pipe Line Company claims it is not a public utility or a common purchaser of gas in Michigan. It has not qualified in any respect as a public utility operating within the State of Michigan. It has not filed or obtained approval of any schedule of rates for the sale of natural gas; has filed no reports; and has applied for no certificate or certificates of convenience and necessity required of public utilities by statute or the rules and regulations promulgated by the Michigan Public Service Commission. It has filed with the Michigan Public



Service Commission for its information all contracts which it has made for the sale of natural gas in the State of Michigan other than the contract with Ford Motor Company hereinbefore referred to as Exhibit 3.

27. Either party may read into the record of this proceeding such parts of the transcript of proceedings before the Common Council of the City of Detroit held February 21, 22, and 23, 1945, and such parts of the transcript of proceedings before the Federal Power Commission in Docket G-210 as they may deem material to this proceeding. Such portions of the transcript so read shall be received as evidence herein, subject only to such objections by either party as are set forth in paragraph 4 hereof.

28. (a) On December 10, 1942, Panhandle Eastern filed with the Federal Power Commission its application Docketed as No. G-437, asking for a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act as amended for the construction of a two inch pipe line from a point on its twelve inch line in Township 3 South, Range 4 West, Calhoun County, to the south city limits of the City of Albion, Michigan, a distance of approximately one and one-quarter miles and for the transportation and sale of natural gas to the Albion Gas Light Company. Applicant also sought a temporary certificate pending the final determination because of an alleged emergency.

(b) Prior thereto and on the 7th day of July, 1942, Panhandle Eastern entered into a contract with Albion Gas Light Company, a public utility owning and operating a manufactured gas plant in the City of Albion and distributing manufactured gas within said city and its environs, to furnish the Albion Gas Light Company its [fol. 349] entire natural gas requirements not to exceed 300,000 cubic feet of firm gas in any one day, a copy of which contract is on file with the Federal Power Commission as FPC Rate Schedule No. 58.

(c) The manufacturing and distribution facilities of the Albion Gas Light Company are within the City of Albion and Calhoun County, Michigan, and with the operation of said plant are under the jurisdiction of the Michigan Public Service Commission.

(d) On December 7, 1942, Panhandle Eastern filed with the Michigan Public Service Commission its application asking the right to construct and operate a line,—

"Beginning at a point on Petitioner's twelve (12) inch line now under construction in Township 3 South, Range 4 West, and extending in a Northerly direction one and one-quarter ( $1\frac{1}{4}$ ) miles to a point near the city limits of Albion, Calhoun County, Michigan."

On January 7, 1943, the Michigan Public Service Commission entered an order granting Panhandle Eastern permission to construct and operate within Calhoun County, in the State of Michigan, a natural gas transmission line over the following route:

"A 23/8" O.D. steel pipe line commencing at the petitioner's present 12" pipe line near the west section line of Section 14, T 3 S, R 4 W, Calhoun County, Michigan, and proceeding in a northerly direction a distance of approximately  $1\frac{1}{4}$  miles to a metering station located near the NW corner of Section 11, Township 3 South, Range 4 West, which is near the southerly corporate city limits of Albion."

On March 27, 1943 (Docket G-437) the Federal Power Commission granted to Panhandle Eastern a temporary [fol. 350] certificate of public convenience and necessity to construct and operate the 2" pipe line to serve Albion Gas Light for a period of five years or for the duration of the national emergency, whichever is longer.

(e) The initial date of delivery of gas by Panhandle Eastern to Albion Gas Light Company under the contract of July 7, 1942, was in July, 1943, and deliveries have continued to this date.

(f) On December 30, 1943, Panhandle Eastern entered into a contract with Albion Malleable Iron Company, a corporation operating an industrial plant in or near the City of Albion, Michigan, to supply its fuel requirements (on an interruptible basis) for the operation of its malleable iron annealing furnaces, core ovens and ladle heaters and for general miscellaneous use, for 3.35 cents per therm. To comply with the contract Panhandle Eastern agreed to construct approximately 14,300 feet of  $3\frac{1}{2}$ " pipe line in a northeasterly direction from a point on its 12" West line, to a point in Section 33, Township 2 South, Range 4 West near the westerly city limits of Albion, Calhoun County, Michigan, where it would install a measuring and regulating station.

(g) On January 28, 1944, Panhandle Eastern filed application with the Federal Power Commission, Docketed as No. G-521, asking a certificate of public convenience and necessity to construct and operate the necessary facilities as above described to serve the Albion Malleable Iron Company in compliance with said contract, and also asked for a temporary certificate because of emergency.

(h) On January 27, 1944, Panhandle Eastern filed its application with Michigan Public Service Commission for authority to construct and operate the last above described [fol. 351] pipe line to serve Albion Malleable Iron Company.

(i) On February 21, 1944, Albion Malleable Iron Company filed its application with Michigan Public Service Commission asking that it, as agent of Defense Plant Corporation, be granted authority to construct and operate a 3" gas pipe line from the proposed meter station of Panhandle Eastern "Located in Section 33, T 2 S, R 4 W, near the City limits of Albion" in a southeasterly direction for approximately 1,695 feet, with terminus at the property of petitioner, through which to receive its natural gas requirements from Panhandle Eastern.

(j) Various interventions were made in these proceedings and after some adjournments an agreement was reached between Panhandle Eastern, Albion Gas Light Company, and Albion Malleable Iron Company and the various applications were withdrawn by written statements signed by the petitioners and filed with the state and federal commissions.

(k) On March 18, 1944, Panhandle Eastern filed with the Federal Power Commission (Docket G-521) a supplement to the withdrawal of its application aforesaid by way of explanation thereof. This stated, in effect, that a conference of the interested parties "developed the facts (a) that Panhandle Eastern's two-inch lateral line serving the Utility in Albion has sufficient capacity to carry the requirements of Malleable, as well as the requirements of the Utility, (b) that through the use of distribution facilities now owned and operated by the Utility within the City of Albion, and through the addition thereto of approximately nineteen hundred (1900) feet of six-inch gas pipe line (about one-third of the steel required by Panhandle Eastern under [fol. 352] the plan set forth in its application for a certificate in Docket No. G-521), the Utility could receive, at Pan-



handle Eastern's Albion Town Border Station, the quantities of natural gas required by Malleable under its contract with Panhandle Eastern and could transport those quantities at suitable pressures and deliver the same to Malleable without commingling the same with mixed gas being used in the Utility's distribution system." A true copy of the contract between Panhandle Eastern and Albion Gas Light Company re delivery of gas to Albion Malleable Iron Company, marked "Exhibit 11," is hereto attached and made a part hereof. A map showing service lines to Albion Gas Light Company and Albion Malleable Iron Company is hereto attached, marked "Exhibit 12" and made a part hereof.

(l) Copies of the various applications made by Panhandle Eastern, Albion Gas Light Company and Albion Malleable Iron Company to both the Federal Power Commission and the Michigan Public Service Commission, all pleadings, the withdrawal notices, the supplement to the withdrawal, and orders of both commissions, together with all contracts between the parties, with respect to the delivery of gas to Albion Malleable Iron Company may be admitted in evidence.

(m) Albion Gas Light Company receives from Panhandle Eastern at its town border measuring station south of the City of Albion natural gas transported from the 12" West Line through the 2" connecting line. The pressure carried in the West Line varies from 210 to 220 pounds per square inch gauge. At the inlet side of the town border measuring station the pressure varies from 150 to 180 pounds per square inch gauge. At the outlet side of that station the regulator is set for 45 pounds in order to maintain a pressure of 20 pounds per square inch gauge at the plant of the Albion Malleable Iron Company. The gas enters the distribution system of Albion Gas Light Company in the same manner as it did prior to the delivery of natural gas to Albion Malleable Iron Company for account of Panhandle Eastern. The gas purchased by Albion Gas Light Company for resale is received together with the gas to be delivered to Malleable Iron Company, and is measured at the town border station by a single meter. It remains undivided to a point indicated as "gas holder" on Exhibit 12, and is there divided, a portion passing into distributing mains of Albion Gas Light Company for servicing its local consumers, the remainder passing directly into a main of

Albion Gas Light Company carrying it first to the plant of the Gale Manufacturing Company, a customer of Albion Gas Light Company, whose gas requirements are supplied therefrom, then passing to the plant of the Albion Malleable Iron Company, where its gas requirements under the contract with Panhandle Eastern are met.

(n) The quantities of gas delivered to the Albion Gas Light Company for its own account and for the account of the Albion Malleable Iron Company are as follows:

	Albion Gas Light Co.		Albion Malleable Iron Co.	
	MCF	Therms	MCF	Therms
<b>1943</b>				
July.....	779	7,915		
August.....	2,331	23,706		
September.....	2,487	25,268		
October.....	2,519	25,593		
November.....	2,609	26,429		
December.....	3,094	31,249		
Total.....	13,819	140,160		
[fol. 354]				
<b>1944</b>				
January.....	3,133	31,675		
February.....	2,868	29,053		
March.....	2,978	30,078		
April.....	2,592	26,127		
May.....	2,981	30,108		
June.....	2,788	28,187	837	8,462
July.....	2,303	23,306	3,003	30,390
August.....	2,331	23,543	4,299	43,420
September.....	2,699	27,287	4,564	46,142
October.....	3,351	33,946	6,494	65,784
November.....	2,837	28,710	6,755	68,361
December.....	3,889	39,318	8,073	81,618
Total.....	34,750	351,338	34,025	344,177
<b>1945</b>				
January.....	5,739	57,734	12,051	121,235
February.....	5,181	52,017	11,045	110,892
March.....	4,749	47,585	10,019	100,390
April.....	3,921	39,288	10,183	102,034
May.....	3,832	38,512	9,829	98,781
June.....	3,071	30,864	9,136	91,817
July.....	3,730	37,449	7,901	79,326
August.....	4,793	48,313	6,175	62,244
September.....	3,881	39,004	5,710	57,386
October.....	5,589	55,946	9,157	91,662
November.....	6,705	66,849	10,328	102,950
December.....	9,416	93,972	7,944	79,281
Total.....	60,607	607,533	109,478	1,098,016
<b>1946</b>				
January.....	10,486	105,070	7,751	77,665
Total July, 1943 Thru Jan. 1946	119,662	1,204,101	151,254	1,519,858

[fol. 355] -The foregoing statement shows the amount of gas billed to each of the two customers. The quantity delivered by Panhandle to Albion Gas Light Company at the outlet of its town border metering station each month was the aggregate of the amounts indicated as delivered for the account of both customers.

29. On January 4, 1943, Panhandle Eastern entered into a contract with Michigan Seamless Tube Company, operating an industrial plant for the manufacture of cold drawn seamless steel tubing, at or near South Lyon, Oakland County, Michigan, for the natural gas requirements of the plant for the operation of one pointing and two annealing furnaces, for the period of two years. The price of said natural gas for the first 100,000 therms delivered in any one month was 5c per therm and for all in excess 4c per therm, with minimum payment of \$10,000 per year for each of the two years.

On March 18, 1943, Panhandle Eastern filed with the Federal Power Commission, Docketed as No. G-457, its application for a certificate of public convenience and necessity for the construction of a 2" pipe line connected with its 18" "North Line" at a point in Section 29, Twp. 1 North, Range 7 East, and running thence to the plant of Michigan Seamless Tube Company in Section 30, Twp. 1 North, Range 7 East, and running thence to the plant of of approximately 4,600 feet and for the transportation of natural gas therethrough. A temporary certificate was asked pending final hearing.

The Federal Power Commission, on May 27, 1943, entered an order granting a temporary certificate for five years or the duration of the national emergency, whichever was the longer.

On July 8, 1943, Panhandle Eastern filed application with the Michigan Public Service Commission asking the right [fol. 356] to construct and operate a pipe line substantially as described in the application to the Federal Power Commission (Docket No. G-457) as above described. This permission was granted by the Michigan Public Service Commission by an order entered July 12, 1943.

Panhandle Eastern agreed to construct the said lateral line and to construct a measuring station at or near the corporate limits of the town of South Lyon, Michigan, at its own cost and expense and to further construct a pipe



line from said measuring station to the plant of Michigan Seamless Tube Company at its own expense but with the agreement that this latter line should be the sole and separate property of the consumer.

The lines were constructed, and the date of initial delivery under said contract was in July, 1943. Since that date, natural gas has been continuously served to said customer, the quantities being as follows:

Volumes of Gas Sold by Panhandle Eastern Pipe Line Co.  
to Michigan Seamless Tube Co.

Month		MCF	Therms
July	1943	1,007	10,231
August	"	2,067	21,021
September	"	4,456	45,273
October	"	5,126	52,080
November	"	4,580	46,395
December	"	3,657	30,876
January	1944	4,867	49,205
February	"	5,281	53,497
March	"	5,351	54,045
April	"	4,514	45,501
May	"	4,453	44,975
June	"	3,331	33,676
[Vol. 357]			
July	1944	3,556	35,987
August	"	4,251	42,935
September	"	3,682	37,225
October	"	3,429	34,736
November	"	3,463	35,046
December	"	2,919	29,511
January	1945	4,189	42,141
February	"	4,340	43,574
March	"	4,861	48,707
April	"	6,438	64,509
May	"	6,802	68,360
June	"	4,379	44,009
July	"	3,263	32,761
August	"	1,690	17,035
September	"	2,590	26,030
October	"	4,229	42,332
November	"	4,316	43,031
December	"	2,857	28,513
January	1946	3,763	37,705

30. Shortly before January 18, 1943, Panhandle Eastern entered into a contract with Continental Oil Company for the purchase of two hundred million cubic feet of natural gas to be produced and delivered from its well known as J. C. Turner Well No. 1, Section 15, Township 3 South, Range 4 West, Calhoun County, Michigan. Thereupon, and on January 18, 1943, Panhandle Eastern made application asking that the Michigan Public Service Commission, under authority of Act No. 9, Public Acts of Michigan of 1929, grant to it "immediate authority to construct a field gathering line for the transportation or conveying of the natural gas from the wellhead of the aforesaid J. C. Turner Well No. 1 to

its main transmission line, and to transport said gas from said source to the locality or localities described above." Said localities were described in paragraph 5 of said application as follows:

[fol. 358] "5. That there is an urgent necessity for the granting of authority to the petitioner to gather from the source of the aforesaid well the natural gas contracted for to meet the demand of war industries at Albion and Battle Creek, Michigan, for natural gas."

On January 18, 1943, the Michigan Public Service Commission entered an order with respect to the foregoing application authorizing a temporary connection of said well with the 12" pipe line of Panhandle Eastern known as the "West Line" or Kalamazoo line. Copies of said application and order may be admitted in evidence.

Under said contract, and in conformity with the order of the Michigan Public Service Commission, Panhandle Eastern constructed a temporary gathering line connecting said J. C. Turner Well No. 1 with its 12" West Line and received delivery into said line of 3,713,000 cubic feet of gas produced in Michigan which was commingled with gas in said line transported from the gas fields in the southwestern states, and delivered at points in Michigan. The purchase of gas began January 20, 1943, and ceased during the month of April, 1943. The total amount paid for the gas purchased was \$556.95.

31. On or about the 30th day of April, 1941, Panhandle Eastern entered into a gas contract with Consumers Power Company to furnish the natural gas requirements of Consumers in six of its operating divisions, viz., Pontiac, Flint, Owosso, Jackson, Battle Creek and Kalamazoo, less such natural gas as it produced or purchased in Michigan and pumped into the north terminus of the twelve inch transmission line of Panhandle, situated about eight miles west of the Village of Zilwaukee. This line is known and described as the "North Line" and begins at a point near the [fol. 359] Ohio-Michigan State line on the main transmission line of Panhandle Eastern running from the Texas and Kansas gas fields to Detroit, Michigan, and runs in a northerly direction to the terminus above mentioned. A copy of the contract above described, now in full force and effect, may be admitted in evidence herein.

The northernmost point of delivery of Panhandle Eastern on its "north line" was for the Flint Division at a point

near the corporate limits of the City of Flint. In compliance with the terms of said contract Panhandle constructed and operates approximately 45.7 miles of 12" pipe line running northwesterly from the point of delivery at Flint to the terminus about eight miles west of Zilwaukee where it connects with transmission lines owned and operated by Consumers Power Company in delivering natural gas produced in the State of Michigan.

The date of initial delivery by Panhandle Eastern under said contract was in November, 1942, and since that time Consumers Power Company has pumped and delivered into its "North Line" at the north terminus thereof the following quantities of natural gas, all of which was produced from wells within the State of Michigan, to wit:

Volumes of Gas Received by Panhandle Eastern Pipe Line Co. from Consumers Power Co. Under the Provisions of the Contract of April 30, 1941

Month	MCF
November 1942	31,522
December "	159,637
January 1943	272,776
February "	210,439
March "	246,696
[fol. 360]	
April "	98,734
May "	
June "	
July "	
August "	
September "	
October "	50,875
November "	124,038
December "	250,150
January 1944	261,024
February "	275,354
March "	294,716
April "	
May "	
June "	72,361
July "	
August "	
September "	
October "	
November "	
December "	235,365
January 1945	305,948
February "	286,980
March "	246,680
April "	
May "	
June "	
July "	
August "	
September "	
October "	
November "	
December "	76,100
January 1946	101,897



[fol. 361] Since said initial date of delivery Panhandle Eastern has delivered to Consumers Power Company under the terms of said contract, at various points of delivery, quantities of natural gas as follows:

	M. C. F.	Therms
<b>1942</b>		
November .....	39,342	384,897
December .....	140,826	1,423,034
<b>1943</b>		
January .....	68,928	696,125
February .....	135,905	1,366,428
March .....	165,422	1,666,252
April .....	298,911	3,026,531
May .....	407,816	4,139,962
June .....	374,648	3,799,778
July .....	384,295	3,903,574
August .....	404,618	4,115,155
September .....	431,547	4,383,810
October .....	394,798	4,010,939
November .....	309,472	3,134,183
December .....	203,168	2,051,611
<b>1944</b>		
January .....	207,087	2,094,626
February .....	166,547	1,686,535
March .....	168,606	1,702,844
April .....	447,427	4,511,636
May .....	449,313	4,538,496
June .....	344,420	3,483,296
July .....	412,889	4,176,954
August .....	438,772	4,432,560
September .....	468,797	4,739,935
October .....	483,439	4,898,980
November .....	474,305	4,797,508
December .....	289,530	2,926,029
[fol. 362]		
<b>1945</b>		
January .....	275,476	2,772,806
February .....	243,918	2,448,930
March .....	299,876	3,003,560
April .....	527,008	5,282,849
May .....	537,737	5,402,535
June .....	482,764	4,852,680
July .....	463,051	4,647,980
August .....	443,422	4,471,111
September .....	465,585	4,680,354
October .....	552,375	5,529,274
November .....	586,308	5,845,491
December .....	648,170	6,468,737
<b>1946</b>		
January .....	675,014	6,763,640

On or before the 5th day of each month, Consumers renders a statement to Panhandle showing the total volume and therms delivered each day during the previous month into the Panhandle mains. Panhandle, in turn, on the 10th day of each month, renders its statement showing the total volume, number of therms and net gas deliveries to Con-

sumers during each day of the previous month, and the payment then due Panhandle from Consumers.

All gas delivered into the mains of Panhandle Eastern by Consumers Power Company under its contract of April 30, 1941, Exhibit 26 herein, has been delivered by Panhandle Eastern within the State of Michigan (current deliveries only excepted) to Consumers Power Company distributing system.

32. During the years 1941 to 1945, inclusive, the revenue derived by Panhandle Eastern from direct industrial sales, the total revenue from gas sales, and the number of cus-  
[fol. 363] tomers served, and the percentage of sales by volume and by revenue, has been as follows:

1941			
	Number of Customers	MCF	Revenue
Direct Industrial Sales.....	19	8,310,954	\$ 1,415,422.76
Other Gas Sales.....		54,250,772	15,626,763.11
Total Gas Sales.....		62,561,726	17,042,185.87
		Per Cent	
Direct Industrial Sales.....		13.28	8.31
1942			
Direct Industrial Sales.....	17	8,644,884	\$ 1,543,281.76
Other Gas Sales.....		60,720,182	16,402,263.93
Total Gas Sales.....		69,365,066	17,945,545.69
		Per Cent	
Direct Industrial Sales.....		12.46	8.60
1943			
Direct Industrial Sales.....	21	7,314,811	\$ 1,557,281.04
Other Gas Sales.....		79,934,410	15,248,295.08
Total Gas Sales.....		87,249,221	16,805,576.12
		Per Cent	
Direct Industrial Sales.....		8.38	9.27
1944			
Direct Industrial Sales.....	24	6,700,892	\$ 1,447,887.31
Other Gas Sales.....		106,538,198	21,171,979.96
Total Gas Sales.....		113,239,090	22,619,867.27
		Per Cent	
Direct Industrial Sales.....		5.92	6.40
1945			
Direct Industrial Sales.....	27	6,691,677	\$ 1,471,608.36
Other Gas Sales.....		113,466,274	21,548,734.33
Total Gas Sales.....		120,157,951	23,020,342.69
		Per Cent	
Direct Industrial Sales.....		5.57	6.39

33. At a hearing before the Federal Power Commission on February 26, 1945, in the matters of Greenfield Gas Company, Inc., and Greenfield Gas Company, Inc., v. Panhandle Eastern Pipe Line Company (Docket No. G-587) Panhandle Eastern Pipe Line Company (Docket No. G-607) and Eastern Indiana Gas Company (Docket No. G-608) which was a consolidated hearing, Panhandle Eastern produced and caused to be sworn as a witness in its behalf, Oscar W. Morton, a rate engineer in its employ. In his cross-examination by Mr. Dudine, Public Counselor of the State of Indiana, Mr. Morton was interrogated and gave answers as follows:

"Cross-examination.

By Mr. Dudine:

Q. I would like to ask whether or not it was planned by your company to serve other industrial consumers in this territory along your line besides the DuPont plant?

Mr. Riggs: If you know.

Mr. Dudine: Let the witness answer.

Trial Examiner: Let the witness answer, Mr. Riggs.

The Witness: I know of no customer in that whole area that the company contemplates serving. I don't mean by [fol. 365] that that if one came up we wouldn't serve it, but I know of no names at the moment.

By Mr. Dudine:

Q. Assuming one did come up, can you tell now what would be the present policy as to whether or not your company would intend to serve that company?

A. Yes, under our present policy we attempt to serve everything as directly as possible."

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"Q. Would you be willing to deliver gas to one of the companies now operating in Fortville for resale by such company to the DuPont plant?

A. We wouldn't do that willingly.

Q. Would you do it unwillingly, or any other way?

A. We might be required to, and then we probably would take it in good grace.



Q. Well, I mean without the application of any force by any regulatory body or agency of that character?

A. No, we won't serve that direct.

Q. Well, what is the reason for that, that you don't want to serve it direct?

A. We want to make as much money as we can out of the business.

Q. And by that you mean that you can make more money selling it directly than by selling it to somebody who in turn would resell it, and thus bring the sale under the jurisdiction of the Federal Power Commission?

A. That is correct.

[fol. 366] Q. That is the only reason, I assume, why you would prefer to make the sale direct; is that correct.

A. That is the only reason I believe that there is, yes."

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"Q. And I suppose that if the industrial market increases, if others than DuPont show an interest in obtaining gas, you would also want to serve that directly, any other industrials?

A. Yes.

Q. That is, you wouldn't want to, for instance, share the industrial market with the local distributing companies?

A. Of course, you say "if you." You mean the company policy?

Q. Yes.

A. It is our policy to secure as much of the load as direct as possible.

Q. Would you say that that policy related to the overall Panhandle system? That is, it is their policy to obtain any place on or adjacent to their system as much direct industrial gas as they can?

A. Yes; sir, that is the avowed policy of the company.

Q. Those are the contracts which I believe you said you loved to obtain?

A. Perhaps that isn't quite the right word, but it conveys the idea."

34. (a) Until the year 1946, Anchor Hocking Glass Corporation was the only industrial consumer in Indiana which Panhandle Eastern served directly, such direct service commencing on or about May 11, 1942. Anchor Hock-[fol. 367] ing has a glass factory located near Winchester,

Indiana, and for many years has been a principal American manufacturer of inexpensive machine made glass tableware and is the third largest manufacturer and distributor of glass containers in the United States. The products manufactured by it are sold principally in interstate commerce and its business is subject to applicable federal regulatory statutes. Its plant at Winchester, Indiana, is one of its large manufacturing plants, but its general office is located at Lancaster, Ohio. The natural gas purchased from Panhandle for use at the Winchester plant of Anchor Hocking is used in the manufacture of products there produced.

(b) Anchor Hocking first commenced the extensive use of natural gas as a fuel at its plant at Winchester about April 22, 1931, purchasing the gas under contract from Indiana Gas Distribution Company, an Indiana corporation, and a wholly owned subsidiary of Columbia Gas & Electric Corporation. In 1936 Columbia Gas & Electric Corporation organized Michigan Gas Transmission Corporation, a Delaware corporation, as a wholly owned subsidiary, and caused that corporation to construct, own and thereafter operate the connecting pipe line between the terminus of the Panhandle Eastern line at Dana, Indiana, and Melvindale, Michigan, adjoining Detroit. On March 31, 1936, Michigan Gas Transmission Corporation was domesticated in Indiana. Panhandle Eastern purchased from Columbia Gas & Electric Corporation all of the common capital stock of Michigan Gas Transmission Corporation and the Indiana Gas Distribution Company on February 6, 1942, and continued to own the stock of Michigan Gas Transmission Corporation until the liquidation of Michigan Gas on March 31, [fol. 368] 1943, when in such liquidation it acquired all of the properties owned by the latter company.

(c) From April 22, 1931, to May 11, 1942, Anchor Hocking had been served with its requirements of natural gas by Indiana Gas Distribution Company, which had purchased such gas from Panhandle Eastern and Michigan Gas Transmission Corporation. On that date, Indiana Gas Distribution Company, then a wholly owned subsidiary of Panhandle Eastern, was caused to cease selling natural gas to Anchor Hocking and Panhandle Eastern entered into a contract with Anchor Hocking to sell its requirements directly. This sale, commencing on May 11, 1942, was the first direct industrial sale made by Panhandle Eastern in

Indiana and the only one until in 1946, when it began deliveries of natural gas to E. I. DuPont DeNemours & Company for use at its "Grasselli Chemical Company" plant located adjacent to the town of Fortville, Indiana, under a contract made some time previously.

35. All other industrial gas served by Panhandle Eastern in Indiana, to date, has been indirectly sold through local distributing public utilities for resale. Large industrial consumers have been for the most part served under Special Industrial Contracts.

The major portion of such sales are made by and through four large public utilities, and for the twelve month period ending September 30, 1944, as a typical period, the quantities of gas purchased by them from Panhandle Eastern and resold by them to industrial consumers and the revenues derived therefrom were as follows:

[fol. 369]

Company	MCF Sales	Revenue
Central Indiana Gas Company (hereinafter called "Central Gas")	9,004,962	\$2,624,557.81
Kokomo Company	480,406	196,241.70
Northern Indiana Public Service Company	940,340	545,940.00
Service Company	1,978,605	812,631.80

36. Central Indiana Gas Company serves natural gas purchased by it from Panhandle to more than 30 large industrial consumers. Such gas is delivered by Central Gas to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. Nine of such plants so served are large glass plants producing products of the same general character as those manufactured by Anchor Hocking. The other such plants normally produce various items of automotive, insulating and fencing materials. The products manufactured in Indiana by all said 30 large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include Hart Glass Division of Armstrong Cork Company, Ball Brothers Company, Foster-Forbes Glass Company, Owens-Illinois Glass Company, Slick Glass Corporation, Sneath Glass Company, The Warfield Company, Sterling Glass Division, Delco-Remy Division of General Motors Corporation, Indiana Steel and Wire Company, Johns-Manville Products Corporation, The National Tile Company and Warner Glass Company.

37. Public Service Company of Indiana serves natural gas purchased by it from Panhandle to nine large industrial



consumers. Such gas is delivered by Service Company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such [fol. 370] consumers normally produce aluminum extrusion products, automotive products, stainless steel, steel springs, galvanized fencing, armor plate, mechanical gears and enamelware. The products manufactured in Indiana by all said large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include Aluminum Company of America, Chrysler Corporation, Ingersoll Steel and Disc Division of Borg-Warner Corporation and Ingram Richardson Company.

38. Kokomo Gas & Fuel Company serves natural gas purchased by it from Panhandle to six large industrial consumers. Such gas is delivered by Kokomo Company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such consumers normally produce steel and wire products, automotive accessories and parts, vitreous enamelware, radios, stoves, stokers, miscellaneous metal specialties, and non-ferrous alloys. The products manufactured in Indiana by all such large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers are Continental Steel Corporation, American Radiator and Standard Sanitary Corporation, Haynes-Stellite Company, Kingston Products Corporation, Chrysler Corporation and Globe Stove and Range Company.

39. Northern Indiana Public Service Company serves natural gas purchased by it from Panhandle to 72 large industrial consumers. Such gas is delivered by said company to such consumers in Indiana and is used by them in their manufacturing plants in Indiana. At said plants such consumers normally produce electrical equipment, automotive products, airplane products, heavy truck equipment, [fol. 371] insulated wire and miscellaneous steel products. The products manufactured in Indiana by all said large industrial consumers are sold by them principally in interstate commerce. Said industrial consumers include General Electric Company, International Harvester Company, Studebaker Corporation and Phelps-Dodge Corporation.

40. Panhandle, in Indiana, sells natural gas to Kentucky Natural Gas Corporation, a Delaware corporation, which company resells all or the principal part of such natural gas to companies distributing, as public utilities, natural gas to residential, commercial and industrial consumers in

Indiana. Panhandle, in Indiana, also sells natural gas to the following companies or municipal corporations, which are public utilities or municipalities distributing such gas to residential, commercial and industrial consumers in Indiana, to wit: Central Gas, Greenfield Gas, Indiana Gas Distribution Corporation, Indiana Ohio Public Service Company, Pendleton Natural Gas Company, Service Company, Richmond Gas Corporation, Town of Lapel, Town of Montezuma, Town of Pittsboro, and Town of Roachdale. The number and classification of gas consumers served by such gas from Panhandle are approximately as follows:

Name of Company	Approximate Number of Customers Served				
	Residential	Commercial	Industrial	Other	Total
Central Gas	31,384	1,322	103		32,809
Greenfield Gas Company, Inc.	1,296	59	2	4	1,361
Indiana Gas Distribution Corporation					2,070
Indiana Ohio Public Service Company	3,314	219	11		3,544*
Kokomo Company	6,674	379	23		7,076
Lynn Natural Gas Company	265	28			293
[col. 372]					
Northern Indiana Public Service Company (Ft. Wayne District)	31,633	1,160	67	58	32,928
Pendleton Natural Gas Company	617	39			656
Service Company	22,516	1,916	46	120	24,598
Richmond Gas Company					6,800*
Town of Lapel					250*
Town of Montezuma					100*
Town of Pittsboro					116*
Town of Roachdale					92
Total	97,699	5,122	252	192	112,693

\* Number of meters.

41. The number and classification of gas consumers served by gas from Panhandle Eastern in Michigan is approximately as follows:

	Domestic	Space Heating	Commercial	Industrial	Total
Michigan Consolidated Gas Company					
Detroit District	477,027	54,187	16,350	1,873 (2)	499,270
Ann Arbor District	9,841	958	734	26 (2)	10,734
Consumers Power Co. (Flint, Jackson, Kalamazoo, Marshall, Owosso, Pontiac)	148,760	5,391	6,340	(1)	160,491
Albion Gas Light Co.	1,408	24	101	7	1,540
Battle Creek Gas Co.	10,750	193	484	56	11,483
Citizens Gas Fuel Co., Adrian	3,163	25	63	11	3,262
National Utilities Co., Monroe	4,514	132	196	13	4,855
	655,463	60,910	24,268	1,986	691,635

(1) Included in Commercial.

(2) Duplicate service eliminated.

[fol. 373] 42. Deliveries of natural gas by Panhandle directly to industrial customers using large quantities of gas, and to other gas companies for resale to industrial customers using large quantities of gas, are, in most instances, subject to curtailment, interruption or discontinuance in the event of an insufficiency in the supply of gas. Michigan Consolidated does not have a special industrial contract with Panhandle.

43. The minutes of a special meeting of the board of directors of Panhandle, held March 11, 1941, contained the following:

Excerpts from Minutes of a Special Meeting of the  
Board of Directors of

Panhandle Eastern Pipe Line Company

March 11, 1941

*Future Development*

The Chairman then referred to his previous progress reports as to future development made at intervals during the last two years and made an oral report of discussions had with Consumers Power Company and Dow Chemical Company with respect to potential new markets in the State of Michigan. He stated that discussions and negotiations had with these two organizations had progressed to a point where Consumers Power Company had expressed a desire to arrange with this Company for the purchase of a supply of gas for resale in Pontiac and Flint, Michigan, and that they might later be interested in the purchase of firm gas for resale in Jackson and Kalamazoo, Michigan, or for a floating dump load gas for fuel at certain of their [fol. 374] generating stations. He stated further that an agreement had been reached with Dow Chemical Company for the sale of dump or floating load gas to that organization but that it was his judgment that sales to Dow Chemical might better await the general development of the Consumers Power Company markets in Michigan."

44. As of the close of the year 1944, Panhandle Eastern was serving directly 23 industrial consumers. These,



arranged chronologically showing the year in which such direct service was commenced, are as follows:

Name of Consumers	Location of Plant
1931	
Harbison-Walker Refractories Co.	Fulton and Vandalia, Missouri
Mexico Refractories Co.	Mexico, Missouri
Missouri Power and Light Co.	Jefferson City and Mexico, Missouri
United Brick and Tile Co.	Vale, Missouri
Walsh Refractories Corp.	Vandalia, Missouri
1932	
Wellsville Fire Brick Co.	Wellsville, Missouri
1933	
John Freiling	Hannibal, Missouri
Universal Atlas Cement Co.	Hannibal, Missouri
Black-White Lime Co.	Quincy, Illinois
Menke Stone and Lime Co.	Quincy, Illinois
1935	
Phillips Petroleum Co.	Paola and Sharpe, Kansas
Phillips Petroleum Co.	Harrisonville, Jefferson City, and Leton, Missouri
Marblehead Lime Co.	Marblehead and Quincy, Illinois
[fol. 375]	
1941	
The W. J. Small Co., Inc.	Booneville, Liberty and Holton, Missouri
1942	
Hercules Power Co.	Louisiana, Missouri
Independent Gravel Co.	Hannibal, Missouri
Anchor Hocking Glass Corp.	Winchester, Indiana
1943	
Pratt and Whitney Aircraft Company of Missouri.	Kansas City, Missouri
The Hegler Zinc Co.	Danville, Illinois
Michigan Seamless Tube Co.	South Lyon, Michigan
1944	
Magnolia Petroleum Co., et al.	Pratt, Kansas
General Motors Corp. — Saginaw Malleable Iron Division — Plant 2	Tilton, Illinois
Albion Malleable Iron Co.	Albion, Michigan

At the close of the year 1945, Panhandle Eastern was serving directly 27 industrial consumers. An exhibit will be prepared and offered by Panhandle Eastern showing the names of these consumers, their location as to plant served, and the date of commencement of such service.

(Signed by counsel for Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company.).

[fol. 376]

## STIPULATION RE EVIDENCE

(Filed with Michigan Public Service Commission, February 15, 1946)

It is agreed by and between the parties to this stipulation that the Michigan Consolidated Gas Company would have offered in evidence at the hearing in these proceedings the material contained in the attached "Statement of Evidence." The said statement of evidence shall be considered as evidence in this cause, the material therein containing the substance of what witnesses on behalf of said Michigan Consolidated Gas Company would have stated in oral testimony and would have offered as documentary proof as part of the record in said cause through the testimony of said witnesses.

It is expressly agreed by the parties to this stipulation, however, that all of the evidence offered herein and hereby is and shall be subject to any objection which Panhandle Eastern Pipe Line Company may assert as to the relevancy, competency or materiality of any evidence so stipulated, and to Panhandle's right to take and preserve an exception to any ruling by the Michigan Public Service Commission to any objection by said party to the relevancy, competency or materiality of such evidence, provided, however, that any such objection or objections shall be made orally on the record or in writing and filed with the Michigan Public Service Commission in this cause at the time of filing this stipulation. Any objection not so taken shall be deemed to be waived.

(Signed by counsel for Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company.)

[fol. 377]

## Statement of Evidence

1. Under date of June 8, 1943, Mr. Edward M. Hahn, vice president and general manager of Kokomo Gas & Fuel Company, a public utility operating in and about the city of Kokomo, Indiana (hereinafter called the "Kokomo Company"); wrote to Panhandle relative to a draft of a renewal contract (hereinafter called the "Continental Supply Contract") covering natural gas for resale to an industrial consumer, Continental Steel Corporation, at the plant of said industrial consumer in Kokomo, Indiana. The expiration date of such contract was November 1, 1943.

Under date of June 24, 1943, Panhandle replied to said letter by acknowledging receipt thereof, and advising Kokomo Company that the renewal of the Continental Supply Contract was being considered and that Panhandle would soon be in a position to discuss the matter further with Kokomo Company. In the afternoon of June 29, 1943, Mr. O. W. Morton, rate engineer of Panhandle, and Mr. George Ballard, industrial gas sales engineer of Panhandle, called on said Mr. Hahn and Mr. Elmer E. Linburg, a vice-president of Kokomo Company and vice-president and general manager of Richmond Gas Corporation, at the office of Kokomo Company in Kokomo, Indiana. Mr. Morton stated that Panhandle desired, and was planning in the future, to make all industrial gas supply contracts, such as the one between Kokomo Company and Continental Steel Corporation, direct with the industrial consumers; that some arrangement would have to be worked out whereby the interest of Kokomo Company in such gas sales would be continued, but the ultimate consumer would no longer be a customer of Kokomo Company but [fol. 378] would be a customer of Panhandle; that if Panhandle sold direct to Continental Steel Corporation, the sale would not come under the jurisdiction of the Federal Power Commission and that such was the chief objective of Panhandle in making such contracts direct with the industrial consumers. Mr. Hahn stated that Kokomo Company would not be a party to the proposed arrangements. Mr. Morton stated that he and Mr. Ballard desired to contact the representatives of Continental Steel Corporation and that they had been instructed by Panhandle to contact such representatives whether or not representatives of Kokomo Company accompanied them in such a meeting. Messrs. Hahn and Linburg expressed a desire to be present at any such meeting, and Mr. Hahn arranged for an appointment with Mr. D. A. Williams, president, of said Continental Steel Corporation. On the morning of June 30, 1943, said Messrs. Morton, Ballard, Hahn and Linburg met with said Mr. Williams and Mr. Ralph K. Clifford, vice-president in charge of operations of said Continental Steel Corporation. At such meeting, said Mr. Morton again explained the position of Panhandle and stated that it would be the intention of Panhandle to make all contracts for supplying gas to large industrial consumers direct with



such consumers and that Panhandle hoped to be able to make such arrangements with said Continental Steel Corporation. Under date of October 11, 1943, Panhandle forwarded to Kokomo Company for acceptance an extension of the Continental Supply Contract which provided for termination by either party on 60 days written notice. On October 19, 1943, Kokomo Company accepted such extension agreement, and on said date Kokomo Company and said Continental Steel Corporation made a supplemental agreement to their above mentioned existing natural gas supply contract fixing a like termination period. On [fol: 379] October 20, 1943, a copy of said supplemental agreement was filed with the Public Service Commission of Indiana by Kokomo Company, and on October 22, 1943, the same was approved by said commission.

2. On the afternoon of June 30, 1943, said Messrs. Morton and Ballard, called on Mr. G. J. Oglebay, vice-president of the Public Service Company of Indiana, a public utility operating in many cities and counties of the State of Indiana (hereinafter called the "Service Company"), and Mr. Herman Horstman, superintendent of gas and water transmission and distribution of Service Company. The meeting was held in connection with the matter of a supply of natural gas for the Ingersoll Steel and Disc Division of the Borg Warner Corporation (hereinafter called "Ingersoll Company"), a large industrial consumer, at New Castle, Indiana, being supplied by Service Company under an interruptible gas contract for a term ending on July 31, 1943. Such gas was obtained by Service Company from Panhandle under a special industrial customer agreement (hereinafter called the "Ingersoll Supply Contract") for a term ending on July 31, 1943. At that meeting Mr. Morton stated that the purpose of their visit was in connection with the resale of gas to interruptible customers served by Service Company; that the Federal Power Commission had previously ruled that direct sales of gas to consumers of pipe line companies were not subject to regulation by such commission; that Panhandle desired to sell as much industrial load direct to industries as possible in order to remove this segment of its business from the jurisdiction of such commission; that Panhandle proposed to sell direct to the industrial consumers at the points of interconnection between the facilities of Panhandle and

[fol. 380] the present distributing utilities, that the facilities of the present distributing utilities would be utilized to transmit the natural gas for the account of the industrial consumers, who would reimburse the distributing utilities in an amount approximating the 20% of the rate being received by them on the sale of the interruptible natural gas; that present plans of Panhandle contemplated limiting the size of interruptible industrial consumers that Panhandle desired to serve direct to such consumers as had a monthly consumption of about 10,000,000 or more cubic feet of gas; and that he had been directed by Panhandle to outline the plan to the separate industrial consumers now served with interruptible gas by Service Company.

3. On July 1, 1943, said Messrs. Morton and Ballard called on Mr. Roy M. Atwater, assistant superintendent of Ingersoll Company, and Mr. Howard Warfield, purchasing agent of said company, at the industrial plant of said company at New Castle, Indiana. At this meeting Mr. Morton stated that Panhandle intended to serve natural gas direct to the said plant of Ingersoll Company, and likewise intended to serve direct all other large industrial gas consumers up and down the pipe line of Panhandle. Mr. Morton and Mr. Ballard referred to certain industrial consumers in the vicinity of Kansas City, whom they stated Panhandle was already serving and to whom they stated Panhandle was giving superior service.

4. Under date of July 19, 1943, Panhandle forwarded to Service Company for acceptance on extension of the Ingersoll Supply Contract which provided for termination by either party on 60 days written notice. On July 29, 1943, Service Company accepted such extension agreement, and under date of July 30, 1943, Service Company and said [fol. 381] Ingersoll Company entered into a supplemental agreement to their above mentioned existing natural gas supply contract fixing a like termination period. On August 5, 1943, a copy of said supplemental agreement was filed with the Public Service Commission of Indiana by Service Company, and on August 13, 1943, the same was approved by said commission.

5. Early in 1941 Panhandle and Central Indiana Gas Company (hereinafter called "Central Gas"), an Indiana corporation and a public utility operating in several cities and counties in the State of Indiana, were in process of

negotiating the terms and provisions of a new gas supply contract. Panhandle initially submitted to Central Gas its printed form of proposed contract. In May 1941, in the course of such negotiations, Central Gas requested of Panhandle that such contract contain a provision which, in substance, would prohibit Panhandle from serving directly natural gas to consumers served directly by Central Gas located within its service area without the consent of Central Gas. Panhandle refused to include any such provision in any form. Such negotiations were conducted on behalf of Panhandle by Mr. G. J. Neuner, vice-president in charge of operations of Panhandle, located in its office in Kansas City, Missouri, and Mr. R. A. Ransom, a director and employee of Panhandle located in its office in New York City. Attached hereto as "Exhibit H-1" and hereby incorporated herein is a copy of letter from Mr. G. B. Pidot, acting on behalf of Central Gas, to Mr. W. L. Glenn, general counsel for Panhandle, dated June 5, 1941, with respect to such proposed provision in the contract under negotiation. [fol. 382] 6. Panhandle and Central Gas, respectively, executed and delivered a new gas supply contract dated July 31, 1941, a copy of which is attached hereto as "Exhibit I" and is hereby made a part hereof. Said contract was executed and delivered by said companies on, or about July 31, 1941. Panhandle subsequently informed Central Gas that its board of directors refused to approve said contract. Attached hereto as "Exhibit J" is a copy of letter from Panhandle to Central Gas, dated August 28, 1941, to which is attached a proposed form of amendment to said contract. Said proposed letter of amendment contains the following statement:

"However, it was indicated (by the Board of Directors of Panhandle) if a reasonable limit were placed on the term of said contract (dated July 31, 1941) with respect to the sale of gas for resale to Special Industrial Customers and Off-Peak Customers, the contract probably would meet with the approval of the Board. You have represented to us that you are now committed to certain of your Special Industrial and Off-Peak Customers for terms exceeding one year from and after August 1, 1941. We are willing to recommend to the Board that those obligations be recognized."



7. Numerous conferences were held between representatives of Central Gas and representatives of Panhandle in the period from August 1941 to August 1942 or thereabouts, negotiating on the provision in said new gas supply contract, dated July 31, 1941, relating to natural gas service to so-called Special Industrial and Off-Peak Customers. One such conference was held in October 1941 in Washington, D. C., at which Central Gas was represented by its president, Mr. G. T. Henry, and by Mr. P. R. Taylor, and Panhandle by Mr. J. D. Creveling and said Mr. G. J. Neu- [fol. 383] ner, its president and vice-president, respectively. Another such conference was held in New York City on March 6, 1942, attended by said Mr. R. A. Ransom on behalf of Panhandle and said Mr. G. B. Pidot on behalf of Central Gas. Still another such conference was held on April 22, 1942, in Washington, D. C., attended by said Mr. J. D. Creveling on behalf of Panhandle, and said Messrs. G. T. Henry and G. B. Pidot on behalf of Central Gas. Another such conference was held on April 23, 1942, in New York City attended by Mr. E. N. Goodwin, general counsel of Panhandle, and said Mr. R. A. Ransom on behalf of Panhandle, and by said Mr. P. R. Taylor, G. T. Henry and G. B. Pidot on behalf of Central Gas. At several of these conferences, and particularly the conference on April 23, 1942, in New York City, the representatives of Panhandle stated that the refusal of the board of directors of Panhandle to approve the new gas supply contract dated July 31, 1941, was based upon the policy that Panhandle should undertake at sometime or other to serve directly some or all of these industrial consumers which are being served by Central Indiana with natural gas purchased by Central Indiana from Panhandle.

8. On August 4, 1942, Central Gas directed to the Federal Power Commission in Washington, D. C., for filing under the Natural Gas Act a petition, copy of which is attached hereto as "Exhibit K" and is hereby made a part hereof. Paragraph 4 of said petition reads, in part, as follows:

"4. On April 23, 1942, Panhandle stated to the Petitioner that the Board of Directors of Panhandle would authorize the new contract but only if it were amended so that Panhandle would not be required to sell gas to the Petitioner for resale to any of its

[fol. 384] interruptible industrial customers except for those such customers specifically named (on pages 4 and 5) in the new contract, and only for the period of the contracts then in effect between the Petitioner and the said customers. It is the position of Panhandle that, although it may have both the gas and the ability to deliver it to the Petitioner, it will not sell to the Petitioner, on the basis of the applicable rate schedule provided in the new contract, gas for resale to any other such industrial customers or to such industrial customers (specifically named in the new contract) beyond a fixed period. Panhandle has announced to the Petitioner that its policy underlying that position, is to take over and serve directly such industrial customers which it refuses to serve through the Petitioner."

9. Attached hereto as "Exhibit L" and hereby made a part hereof is a copy of a notice of cancellation or termination, dated May 18, 1943, by Panhandle to the Federal Power Commission, notifying said commission of the proposed cancellation on specified dates in July and August of 1943, of rate schedules therein identified, covering natural gas purchased by Central Gas from Panhandle for resale for ultimate consumption by fourteen industrial customers of Central Gas, named in said notice.

10. On June 3, 1943, said Mr. G. T. Henry and G. B. Pidot, conferred with Mr. W. G. Maguire and Mr. C. Budrus, chairman of the board and president, respectively, of Panhandle, in the Chicago office of Panhandle, with respect to the threat or attempt by Panhandle, in connection with said notice of cancellation of rate schedules covering natural gas purchased by Central Gas for resale to fourteen of its large industrial customers, to undertake [fol. 385] to serve such customers directly. These representatives of Panhandle stated that Panhandle was interested in serving directly certain industrial customers of Central Gas but on some basis which would make such direct service by Panhandle outside of the jurisdiction of the Federal Power Commission under the Natural Gas Act. Said Mr. W. G. Maguire stated at such conference that Panhandle was anxious to take over such business because it was an unregulated transaction both as to the

Federal Power Commission and the Public Service Commission of Indiana and that he intended to establish higher industrial rates based on a competitive fuel basis. On or about June 11, 1943, said Messrs. W. G. Maguire, C. Budrus and I. L. Letts, as representatives of Panhandle, the last named being its general counsel, and said Messrs. G. T. Henry, L. N. Boisen and G. B. Pidot, as representatives of Central Gas, conferred in the office of said Mr. W. G. Maguire in New York City. The representatives of Panhandle stated in substance that Panhandle intended to take over direct service to certain of the large industrial customers of Central Gas and any negotiations would have to be with that eventuality in mind.

11. Attached hereto as "Exhibit M" and hereby made a part hereof is a copy of a letter of Central Gas to the Federal Power Commission, dated August 9, 1943, which is, as therein stated, "in reply to your (Federal Power Commission) letter of May 29, 1943, requesting information on the effect of notice of cancellation or termination dated May 18, 1943, by Panhandle Eastern Pipe Line Company filed with the Federal Power Commission, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers." Said letter contains, in part, the following:

[fol. 386] "It is the declared policy and intention of Panhandle Eastern Pipeline Company to abandon service to Central Indiana Gas Company for resale to these industrial consumers, and to try to take over and serve directly these industrial consumers so that the rates to be charged therefor will be beyond the regulatory control of the Federal Power Commission. Since it is patently impossible, as shown by the attached map, for Panhandle Eastern Pipeline Company now to serve these industrial consumers except by means of the facilities of Central Indiana Gas Company and since, as stated by Panhandle Eastern Pipeline Company in its notice of cancellation, it intends to continue service for these industrial consumers, we do not see that there is any alternative for Central Indiana Gas Company but to disapprove and oppose vigorously the proposed cancellation. It is clear that the present and future public convenience and necessity will not permit such pro-



posed abandonment. Further, it is noteworthy that the underlying purpose of such proposed abandonment is to try to effect a technical or paper rearrangement of this sale to Central Indiana Gas Company for resale to industrial consumers, so that it will have the appearance of a direct sale and hence be at rates not subject to the jurisdiction of the Federal Power Commission."

12. The following is a copy of letter from Panhandle to the Federal Power Commission, withdrawing its notice of cancellation dated May 18, 1943, as amended and extended:

[fol. 387]

"September 1, 1943

Federal Power Commission  
Washington, D. C.

Attention: Leon M. Fuquay, Secretary  
Re: Docket No. G-495

Dear Sirs:

This letter is with reference to the letter of Central Indiana Gas Company to you, dated August 9, 1943 protesting our notice of cancellation, dated May 18, 1943, of contracts with Central Indiana Gas Company for its gas requirements for resale to fourteen of its industrial customers.

We have not concluded negotiations with certain other war industries, not presently served by us, which would require volumes of gas equal to those volumes required by Central Indiana Gas Company to serve said fourteen industrial customers. Moreover, because of the shortage and the conservation of critical materials, we are unable at this time to obtain the necessary facilities to render direct service to any of the industries named in our notice of cancellation.

Without altering our policy to any extent whatsoever with respect to this matter, but for the reasons above stated, we hereby withdraw said notice of cancellation, dated May 18, 1943, as amended and extended by our letters to Federal Power Commission, dated June 14, 1943 and July 23, 1943, without prejudice to our right of again filing

a similar notice of cancellation, which we intend to do, at such time as it may appear to us to be desirable.

Very truly yours  
President

cc: Central Indiana Gas Company"

[fol. 388] 13. The following is a copy of letter from Central Gas to Federal Power Commission, dated October 22, 1943, withdrawing its protest to the proposed notice of cancellation:

October 22, 1943.

Federal Power Commission  
Washington, D. C.  
Attention: Office of the Secretary

Dear Sirs:

We have received, presumably from Panhandle Eastern Pipeline Company, an unsigned copy of letter dated September 1, 1943 addressed to the Federal Power Commission and referring to Docket No. G-495.

That letter withdraws the notice of cancellation by Panhandle Eastern Pipeline Company to the Federal Power Commission, dated May 18, 1943, as amended and extended, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers. Since our letter to you dated August 9, 1943 disapproving and opposing the proposed cancellation was in the nature of a protest responsive to the notice of cancellation, we should like to advise that in view of the withdrawal of that notice of cancellation, the Commission may consider that the purpose of our protest has been effectuated. Accordingly, we are pleased to have the Commission consider our protest as withdrawn. Since there appears a statement in the letter of withdrawal by Panhandle Eastern Pipeline Company that they intend at some future time to file again a similar notice [fol. 389] of cancellation, our withdrawal is necessarily without prejudice to our rights of filing again a protest or taking any other action which may be necessary or desirable to assure compliance by Panhandle East-

ern Pipeline Company with the requirements of the Natural Gas Act.

Very truly yours,

CENTRAL INDIANA GAS COMPANY

By Guy T. Henry  
President."

14. Attached hereto as "Exhibit N" and hereby made a part hereof is a copy of a letter from Central Gas to the Federal Power Commission, dated May 13, 1944, filed in said commission's Docket No. G-405, withdrawing, without prejudice, said petition, affirming therein the allegations contained in said petition.

[fol. 390] TESTIMONY OF C. H. BURNHAM BEFORE FEDERAL  
POWER COMMISSION

January 11, 1946

The witness having been first duly sworn was examined and testified as follows:

*Direct Examination*

Mr. Yost: I think all counsel present know Mr. Burnham, know that he is vice-president and chief engineer of Panhandle Eastern Pipe Line Company, know his qualifications. Does anyone require me to qualify him?

Mr. May: I concede his qualifications.

Mr. McGee: I will concede his qualifications.

There are several types of metering regulating systems as such facility is known in the natural gas business. The type we would install for the delivery and measuring of the volumes of gas that are to be delivered to the Ford Motor Company under this contract is known as an orifice meter measuring station and will consist of three 10 inch runs with the necessary valves, fittings, orifice flanges, and recording instruments. Since this is also a regulator and metering station there will be three regulators, one installed in each run. All of this will be housed in a suitable building and all will be located, according to our present plans, in close proximity to our pipe line. Quite naturally it will be connected to our pipe line, through a tap to be made in that line. At the outlet of the metering station there



will be the connection to the proposed line to be built by the Ford Motor Company.

[fol. 391] By Mr. McGee:

The metering and regulating station I have just described could be used to deliver gas to the Anchor Hocking Glass Company of Winchester, Indiana.

By Mr. Yost:

The meter measuring and regulator station that I have described is to be used for controlling the pressure and determining the quantities of gas that will be delivered at that point.

Cross-examination.

By Mr. McGee:

I testified that the metering and regulating station would be placed within close proximity of our pipe line. The distance from the pipe line to the point where that metering and regulating station would be placed will be ~~the~~ eight feet according to our present plans. It might be a legal question as to where the meter begins—does it begin at the tap? Does it begin at the header where the runs take off the header, or where does the meter begin? Our present plans call for the distance from the center line of the pipe line to the center line of the meter header to be approximately eighteen feet. But that can be zero feet if we want to do away with that connection. Our present plans are to have it eighteen feet from the center line of our 22-inch line. The tap will be in the side of our pipeline.

I testified that our present plans call for the building to be located eight feet from the center of our line, and it is our present intention to tap the line. According to our present plans, all the gas that will be delivered to the Ford Company will go through the tap and into the metering station. The total length of the pipe from the tap to the [fol. 392] meter header is approximately, according to our present plans, 18 feet. But we can eliminate that entirely if we so desire. Our plans are to build a pipe of 18 feet. We propose to install a 10 inch valve at that point according to our present plans. The valve will be swedged to 12 and  $\frac{3}{4}$  size, and the proposed pipe is 12 and  $\frac{3}{4}$  inches

O.D. I have ascertained the size of that pipe by referring to proposed plan I have before me at the present time.

Q. What facilities other than the metering and regulating station would be used by Panhandle in order to get the proposed quantities of gas indicated under the Ford contract to be tapped on the main line?

A. Are you asking me if this gas will move through our system to that point?

Q. Yes, and what equipment?

A. I don't know what engines might be down at the time or anything like that, but it will move through our system through that point.

Q. From the Panhandle Hugoton Field through the various states the pipe line traverses to the point of delivery at the tap.

A. That is right.

Q. And that gas will be part of other gas that will be compressed at your various compressing stations along the line?

A. That is correct.

Q. What are the proposed pressure conditions under which the deliveries to the Ford Motor Company are proposed?

A. I don't recall offhand what they are, but the equipment we are installing here would be—on the inlet side of the station, will be ample for 600 pounds working pressure. The regulators, of course, will not have that much [fol. 393] pressure upstream. Downstream I assume the pressure will be on the order of 100 pounds.

Mr. McGee: That is all.

By Mr. Hebel:

We make an opening in the main line and attach that lateral pipe that is 18 feet, and then in the main line in connection with the opening we put in a valve. That opening under our present plans is approximately a mile from the northern terminus of our 22-inch line—the Detroit measuring station. After we get this tap made in the line then under our present plans we will run a 12 and  $\frac{3}{4}$  inch line about eighteen feet, and at that point there are three branches to that line, three delivery lines. The purpose of those three meter runs is to permit variation in quan-

tities of gas to be delivered and still maintain a reasonable degree of accuracy in our measurements.

There will be a regulator in each line—and by virtue of having those three lines and three regulators we could deliver gas to Ford at three different pressures simultaneously, but only if Ford was able to take it away from our station at three different pressures. If they desired to take it away at different pressures we could deliver it at different pressures in three different lines. There is a meter on each of those lines and a regulator on each of those lines. We wouldn't have to have this eighteen feet. The lateral line could be dispensed with entirely. We could make three taps in our line and we could draw off these three meter runs direct from our line, thereby substituting a part of our pipe line for what you might say we now plan to have a header form that function. In other words, part of our pipeline becomes a meter header and becomes a part of the meter station. If we made three openings instead of the one we still would have to get from [fol. 394] the opening to the regulator and meter. But that same piece of pipe is now required to come from our header to the regulator, so there would be no additional pipe involved. You cannot measure your gas without running it through a meter, regardless of whether it is a positive meter, orifice meter, or any type of meter. So if our pipeline becomes part of the meter header in that event, true, the gas would move up to the regulator but it moves up to the regulator in this meter station. In that situation our regulator would be immediately above our 22-inch line. If we put the tap on the side of the line it would go direct through the valve into the regulator. If we put the tap on the top of the line we might put an elbow there and put the regulator in the horizontal run. But on the other hand regulators will work in vertical runs.

If we put it on the side, we would have to have some kind of a joint to put in there to which we could attach our regulator. We would have a valve which we would have in our meter run. The meter run valve would be applied direct to the pipe line. There will be flanges.

By Mr. May:

The flow of gas would be continuous through the metering and regulating equipment if we didn't interrupt it.



If everything was all right, it would keep right on flowing through the metering and regulating station. That is how it was designed, for continuous flow of the gas. A regulator is supposed to give continuous flow of gas. A metering station meters the volume of gas and the regulator regulates the delivery pressure.

I heard that the line being built by the Ford Motor Company is a 16-inch line. That doesn't necessarily mean I will have to build a meter station to fill a 16-inch line. [fol. 395] For exhibits attached to Stipulation of Evidence, exhibits referred to in Stipulation of Fact and exhibits admitted in evidence at the hearing before the Michigan Public Service Commission see Volume II of Record, entitled Exhibits.

OPINION #130 OF THE FEDERAL POWER COMMISSION IN THE  
MATTER OF PANHANDLE EASTERN PIPE LINE COMPANY AND  
MICHIGAN CONSOLIDATED GAS COMPANY

(Issued March 14, 1946)

On November 7, 1945, the City of Detroit, Michigan, and the County of Wayne, Michigan, filed a complaint against Panhandle Eastern Pipe Line Company (Panhandle) alleging that contractual arrangements between Panhandle and Michigan Consolidated Gas Company (Michigan Consolidated) unlawfully limit the quantity of natural gas which Panhandle is obliged to supply to Michigan Consolidated in any one day; that Panhandle unlawfully refused to supply natural gas to Michigan Consolidated during off-peak periods for underground storage and that Panhandle has otherwise unlawfully restricted the supply of natural gas to Michigan Consolidated in violation of the rights of public consumers in the City of Detroit and the County of Wayne, both in the State of Michigan.

On December 12, 1945, a complaint was received from Michigan Consolidated requesting that an investigation be instituted by the Commission with respect to the undertaking of Panhandle to sell natural gas to the Ford Motor Company, which is presently served by Michigan Consolidated. [fol. 396] dated. On December 13, 1945, a telegram was received from the Michigan Public Service Commission joining in the complaint of Michigan Consolidated and asking that this Commission take appropriate action regarding such proposed sale to the Ford Motor Company.

Communications were also received from the regulatory commissions of the States of Illinois and Indiana and from the Central Indiana Gas Company, Indiana Gas and Water Company, Inc., and Kokomo Gas and Fuel Company, distributing company customers of Panhandle in Indiana, with reference to the natural-gas service rendered to present customers, and asking that the Commission investigate Panhandle's ability to render adequate gas service to existing consumers before permitting any additional connection to its transmission pipe line facilities.

On December 18, 1945, the Commission ordered Panhandle, inter alia, to show cause:

(A) Why the supply of natural gas to Ford Motor Company, as provided in its contract of October 20, 1945, (1) will not impair its ability to provide adequate and reasonable natural gas service to consumers entitled to such service under the Natural Gas Act and orders of this Commission, and (2) will not violate orders of this Commission, authorizing the construction and limiting the operation of facilities under Section 7 of the Natural Gas Act as provided in such orders; and

(B) Why appropriate and timely application should not be made under Section 7 of the Natural Gas Act for the construction and operation of all necessary [fol. 397] pipe line facilities required for the interstate transportation of natural gas to the Ford Motor Company including all measuring and regulating equipment which may be required.

Public hearings, including oral argument before the Commission were held in Washington, D. C., commencing on January 7, 1946, and through January 12, 1946. The Public Counselor of the State of Indiana and the regulatory commissions of the States of Indiana and Michigan participated in this proceeding. Other participants included the cities of Detroit and Dearborn, Michigan, as well as several distribution companies served by Panhandle, all of which protested against the proposed sale of gas to the Ford Motor Company.

By reason of the filing of a complaint by Michigan Consolidated, the Michigan Public Service Commission also had before it for consideration the matter of the proposed

sale of gas to Ford. As a result of such complaint the Michigan Commission, on December 21, 1945, issued an order to show cause, directed to Panhandle, why an order should not be entered restraining Panhandle from making direct sales of natural gas to consumers in the State of Michigan. After a hearing on the issues, the Michigan Commission rendered an opinion and order on February 18, 1946, by the terms of which it ordered Panhandle to cease and desist from making direct sales to industries in Michigan, unless a certificate of public convenience is issued permitting the performance of such service.

Panhandle, on and since February 7, 1942, has owned and operated, among other facilities, a natural-gas main transmission pipe line system extending from a point known as Windmill Junction in Moore County, Texas, [fol. 398] through the States of Oklahoma, Kansas, Missouri and Illinois and into the State of Indiana to a point near the Illinois-Indiana boundary. On or about March 31, 1943, Panhandle acquired the transmission systems of its subsidiaries, Illinois Natural Gas Company and Michigan Gas Transmission Corporation, resulting in the extension of Panhandle's main transmission pipe line through the States of Indiana and Ohio and into the State of Michigan. Panhandle is engaged in producing and purchasing natural gas in the Panhandle and Hugoton fields located in the States of Texas, Kansas, and Oklahoma, and in transporting such gas in interstate commerce, and in its sale in interstate commerce for resale for ultimate public consumption.

Panhandle's first major application to increase its system sales capacity was filed on February 25, 1943 (Docket No. G-452). In such application Panhandle submitted for the approval of the Commission the first part of its overall looping program, which consisted of looping its main transmission pipe line systems in the States of Kansas, Missouri and Illinois, for the purpose of increasing its system sales capacity in order to meet the requirements of new customers, comprising three distributing companies in Michigan and one distributing company in Illinois; and to satisfy the increased natural-gas requirements of other customers.

Following this application, Panhandle filed applications on March 25, 1943 (Docket No. G-459), April 24, 1944



(Docket No. G-543), and February 2, 1945 (Docket No. G-620), requesting authorization to construct and operate additional pipe line facilities consisting of extensive loop lines, additional compressor units aggregating 3,100 horsepower, appurtenant facilities and valve changes on its pipe line system.

[fol. 399] Panhandle in the several proceedings with respect to such applications, has represented to the Commission that such proposed construction is necessary in order to assure the continuity of adequate service and satisfy the needs of customers attached to its system or proposed to be served under contracts submitted in evidence during those hearings.

The Commission, in authorizing the construction and operation of the facilities applied for by Panhandle beginning 1943, recognized the need for such facilities in order that Panhandle might meet its existing obligations and maintain adequate service in the markets it had committed itself by such applications to serve. One of the important markets now served by Panhandle is Ohio, where, in recent years, an urgent need has been shown for additional supplies of gas. As a result of such showing, the Commission authorized major additions to Panhandle's interstate transmission system in order that large quantities of natural gas may be delivered to the East Ohio Gas Company and Ohio Fuel Gas Company. We have recognized that the consumers in the various States, either directly or indirectly served by Panhandle, expended substantial sums of money in order to receive natural gas service and that they therefore have a right to assume that Panhandle would not expand its markets or its service to the extent that it would impair its ability to perform fully the obligation imposed upon it to supply natural gas to customers attached to its system.

In keeping with the authority granted to it the Commission, as early as October 2, 1942, imposed conditions in an order issuing a certificate of public convenience and necessity (Docket Nos. G-408, G-410); which were then deemed necessary in the public interest. In authorizing Panhandle to deliver gas to The Ohio Fuel Gas Company, the Commission [fol. 400] conditioned the deliveries to such periods of time and such quantities of natural gas as would "not impair the ability or capacity of Panhandle Eastern Pipe Line Company . . . to serve and fully meet its obligations

to its present customers" then attached to its system. On November 30, 1943, by reason of the construction of additional pipe line facilities by Panhandle which augmented its system capacity, the Commission amended such order and removed the specific condition referred to above.

The constant growth of the markets served by Panhandle required this Commission, in dealing with the numerous applications filed by the Company with the Commission, to consider the effect of the company's future operation of such facilities on customers which it had already obligated itself to serve. The Commission, therefore, on March 27, 1945<sup>1</sup> in authorizing the construction and operation of additional facilities by Panhandle to maintain its system sales capacity, provided that the facilities therein authorized should not be used for either the transportation or sale of natural gas, subject to the jurisdiction of the Commission, to any new customers except upon specific authorization by the Commission.

In its Opinion and Order adopted March 31, 1945<sup>2</sup> the Commission authorized Panhandle to construct and operate additional facilities in order to increase its system sales capacity by 50,000 Mcf for the purpose of meeting its market requirements, but again with the condition that the facilities authorized should not be used for either [fol. 401] the transportation or sale of natural gas, subject to the jurisdiction of the Commission, to any new customers, except upon specific authorization first obtained from the Commission.

Notwithstanding the Commission's orders above referred to, and the obligations to its existing customers, Panhandle entered into a contract with the Ford Motor Company on October 20, 1945, under the terms of which it is to supply Ford Motor Company with natural gas.

It is proposed that deliveries of natural gas for industrial use to the Ford Motor Company at a point on or near Panhandle's present pipe line in Dearborn, Michigan, commence on or before May 1, 1946, and to continue to and including November 30, 1948, and from year to year thereafter unless terminated by either party on ninety days'

<sup>1</sup> *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-543.

<sup>2</sup> *In the Matter of Panhandle Eastern Pipe Line Company*, Docket No. G-620.

notice. The volumes to be delivered, after an initial change-over period for the Ford Motor Company, are 25,000 Mcf per day (plus or minus 10%) Monday through Friday exclusive of holidays, and 15,000 Mcf per day on holidays, Saturdays and Sundays. In addition, the Ford Motor Company has the option, upon six months' notice to Panhandle, of increasing its purchases by 25,000 Mcf per day or to a total of 50,000 Mcf per day on Mondays through Fridays. These relatively large deliveries are proposed to be made on an interruptible basis.

The record before the Commission shows that the present designed daily sales capacity of Panhandle's main line system is 383,000 Mcf per day and that Panhandle's present interruptible load amounts to approximately 60,000 Mcf per day. Operating under present conditions, it found itself forced to curtail deliveries to its present interruptible customers during 14 days of the month of December 1945. On four days during that period it became necessary for [fol. 402] the company to direct a 100% curtailment of the use of interruptible gas. This indicates that on those four days the firm load approached the line capacity of 383,000 Mcf. The system mean temperature at which the firm load approached system capacity was about 6° F.

Based on Panhandle's system mean temperatures for the winter season, December 1944—March 1945, the schedule of curtailment required for the three conditions of interruptible load would be as follows.

NUMBER OF DAYS AND PER CENT CURTAILMENT REQUIRED DURING 121-DAY WINTER SEASON, DECEMBER THROUGH MARCH

System Mean Temperature	Curtailment With Present Load		Curtailment With Present Load Plus 25,000 Mcf Per Day		Curtailment With Present Load Plus 50,000 Mcf Per Day	
	Number of Days	Per Cent	Number of Days	Per Cent	Number of Days	Per Cent
50-41.....	0	0	0	0	10	20
40-31.....	0	0	29	27	29	44
30-21.....	39	40	39	58	39	67
20-11.....	26	75	26	82	26	86
10 and less.....	3	100	3	100	3	100
Number of Days of Curtailment.....	68		97		107	
Average Curtailment over 121-Day Period.....		31%		45%		54%



[fol. 403] Under present operating conditions, the average curtailment of every interruptible consumer during the winter season is approximately 31 per cent. If the interruptible demand were to be increased to 85,000 Mcf per day by the addition of 25,000 Mcf per day of Ford load, each interruptible customer including Ford would be curtailed an average of approximately 45 per cent of its normal requirements during the winter. The curtailment of each present interruptible customer would be increased by 14 per cent, and 14 per cent of the gas now available to such customers would be delivered to Ford. If the Ford option to take 50,000 Mcf per day were exercised, then each interruptible consumer including Ford would be curtailed an average of 54 per cent. In this instance the gas delivered to Ford would be obtained by increasing the curtailment of present 31 per cent to 54 per cent, or by an additional 23 per cent on the average day.

Under present conditions it is necessary to make some curtailment of interruptible deliveries on 68 days out of 121 days of the winter season, with curtailments commencing when the system mean temperature drops to 30° F. With the addition of the first increment of 25,000 Mcf per day of Ford interruptible load, it would be necessary to start curtailments when the system mean temperature fell to only 40° F. and curtailment would be necessary on 97 days of the winter. When the Ford load reaches 50,000 Mcf per day curtailment must start at 50° F., and some curtailment would be necessary on 107 days of the 121-day winter season.

The record in these proceedings show that, on the Panhandle system as a whole during the year 1946, there will be a deficiency of interruptible gas during the months [fol. 404] of January, February and December. If it were to deliver 25,000 Mcf per day to Ford Motor Company under the proposed contract and make deliveries to Union Gas Company of Canada through the facilities as proposed in Docket Nos. G-612 and G-619, there would be a deficiency in supply of interruptible gas on the average day during seven months of the year, and if it were to increase deliveries to Ford to 50,000 Mcf per day, there would be a deficiency of such gas on the average day of every month of the year.

The evidence indicates that Panhandle's present customers require additional gas to meet increases in their firm load, thus making less gas available for interruptible service. Hence, the gas proposed to be delivered under the Ford contract can only be derived from the substantial lowering of the standards of service to present interruptible consumers.

It appears to the Commission that the impairment of service to present consumers, which would be caused by this additional load, would lower the standards of service beyond that minimum which such consumers might reasonably demand, and would create a condition which such consumers are not now adequately prepared to meet through the use of standby fuel or otherwise.

Panhandle offered no evidence to refute the record facts as indicated above. Regardless of its failure to do so, it is quite clear from the record that the service proposed would unquestionably impair the ability of Panhandle to provide adequate and reasonable natural-gas service to consumers now entitled to such service.

Counsel for Panhandle advanced the argument at the hearing that the Commission has no jurisdiction under the Natural Gas Act regarding the sale of gas to a direct industrial consumer such as Ford, and, further, under the circumstances involved, a certificate of public convenience and necessity pursuant to Section 7(c) of the Act is not required.

Without receding from this position, Panhandle filed an application (Docket No. G-693) on January 10, 1946, pursuant to Section 7(c) of the Act for authority to construct and operate certain facilities required in order to make the proposed deliveries of natural gas to the Ford Motor Company.

The Commission wishes to make it plain that its action in this matter is not to be construed as an attempt to assert jurisdiction over a direct sale of gas as such. However, we do by our action in this matter indicate clearly that, in our opinion, the Natural Gas Act does confer on the Commission jurisdiction over a company found to be a natural-gas company within the meaning of the Natural Gas Act, and over the facilities used by such company in either transporting natural gas in interstate commerce or in the sale of such gas for resale, especially to the

extent necessary to enable the Commission to protect the adequacy of service to its customers.

In the instant case there can be no doubt that the entire interstate transmission pipeline system of Panhandle is subject to the jurisdiction of the Commission. Hence, it is for the Commission to determine whether it is contrary to the public interest to permit Panhandle to operate its system for the purposes proposed. If the Commission could not make this determination it would not be able to exercise properly the regulatory authority conferred upon it by Congress. That there has been a clear recognition [fol. 406] of this authority by Panhandle is evidenced by the several applications heretofore filed by it for permission to increase its system sales capacity.

Therefore, it is our view that where, as here, a company has not the capacity to sell a large quantity of gas to a new customer without impairing its ability to render satisfactory service to existing customers, it is the duty of the Commission in protecting the interest of the public to prevent such company from using the facilities subject to its jurisdiction for such purpose. The Commission fixed the capacity of Panhandle's pipe line system for the furnishing of service to customers then represented by Panhandle to require gas service.

The Commission accordingly concludes and finds that for Panhandle to use its presently authorized capacity for the purpose here under consideration would be contrary to its representations when it sought authorization for new capacity, violative of existing orders of the Commission, and against the public interest.

For the reasons set forth in the Opinion herein, it is appropriate for the Commission to dismiss without prejudice the application filed under Section 7(c) of the Act in the related proceeding (Docket No. G-693), referred to above. In view of the conclusion and finding stated above, no further order appears necessary or appropriate at this time.



[fol. 407] ORDER OF THE FEDERAL POWER COMMISSION IN THE  
MATTER OF PANHANDLE EASTERN PIPE LINE COMPANY

Issued March 14, 1946

It appears to the Commission that:

(a) On January 10, 1946, Panhandle Eastern Pipe Line Company (Panhandle) filed an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act, as amended, to authorize the construction and operation of a triple-orifice measuring and regulating station consisting of three 10-inch meter runs, three 8-inch regulators, and other appurtenant piping, valves and equipment necessary to properly control and measure varying quantities of natural gas for delivery to the Ford Motor Company at a point of connection on Panhandle's main transmission pipeline in Ecorse Township, Wayne County, Michigan.

(b) The Public Service Commission and Public Counselor of Indiana, Indiana Gas & Water Company, Inc., Central Indiana Gas Company, and the Kokomo Gas and Fuel Company filed petitions to intervene on January 24, 25, 31, 1946, and February 4, 1946.

(c) On September 7, 1945, the City of Detroit, Michigan, and the County of Wayne, Michigan, both municipal corporations of the State of Michigan, filed a joint complaint against Panhandle Eastern Pipe Line [fol. 408] Company and Michigan Consolidated Gas Company alleging that existing contracts and arrangements between Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company (Michigan Consolidated) unlawfully limit the quantity of natural gas which Panhandle is obliged to supply to Michigan Consolidated to 125 million cubic feet in any one day; that Panhandle unlawfully refuses to supply natural gas to Michigan Consolidated during off-peak periods of time for underground storage; that Panhandle has otherwise unlawfully restricted the supply of natural gas to Michigan Consolidated in violation of the rights of public consumers in the City of Detroit and the County of Wayne, both in the State of Michigan.<sup>1</sup>

<sup>1</sup> City of Detroit, et al., v. Panhandle Eastern Pipe Line Company et al., Docket No. G-661.

(d) On December 12, 1945, a telegram was received from Michigan Consolidated directing the Commission's attention to the proposal of Panhandle to sell natural gas to the Ford Motor Company, which is presently served by Michigan Consolidated, and requesting the Commission to institute an immediate investigation concerning such proposed service. On December 13, 1945, a telegram was received from Michigan Public Service Commission joining in the complaint of Michigan Consolidated and requesting also that this Commission take appropriate action in the premises.

[fol. 409] (e) The Commission, by order dated December 18, 1945, instituted an investigation with respect to the complaint referred to in paragraphs (c) and (d) above, and directed Panhandle to appear at a Public hearing to be held on January 7, 1946, at 10:00 a.m. (EST), in the Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters involved and the issues presented in such proceedings.

(f) The Commission in its Opinion No. 130 adopted March 14, 1946, determined that for the reasons set forth in said opinion, it is appropriate to dismiss without prejudice the above-docketed application.

The Commission finds that:

In the light of our Opinion No. 130 referred to in paragraph (f) above, it is appropriate and in the public interest to dismiss without prejudice the above-docketed application.

The Commission orders that:

The application be and the same is hereby dismissed without prejudice.

[fol. 410] IN CIRCUIT COURT OF INGHAM COUNTY

OPINION OF THE COURT—Filed October 9, 1946

Plaintiff is a Delaware corporation authorized to do business in Michigan, engaged in transporting natural gas from Texas, Oklahoma, and Kansas into this state. Among its customers is the Michigan Consolidated Gas Company, a public utility, distributing artificial and natural gas to ultimate consumers in the Detroit area, one of those customers being Ford Motor Company. On April 20, 1945, Panhandle and Ford entered into a contract wherein Panhandle agreed to furnish, and Ford agreed to buy, large quantities of gas upon an interruptible basis. The transmission lines of Panhandle cross the property of Ford, and in order to make this gas available to Ford it is contemplated that Panhandle will tap its line, build an extension about eighteen feet in length, and at that point install measuring and regulating devices. There the pressure will be reduced and gas can be taken away by Ford in three lines at different pressures.

On December 18, 1945, Michigan Consolidated filed its complaint with the Michigan Public Service Commission, charging that Panhandle had adopted a policy of making direct sales to industrial users, specifically complained of the Panhandle-Ford contract, and asked that such sales be restrained. The Commission issued an order to show cause and ordered a hearing thereon on January 17, 1946.

On January 7, 1946, Panhandle filed its bill of complaint in Ingham County against the Commission, seeking an order to restrain the Commission from interfering with its contractual relations with Ford and from holding the contempt [fol. 411] plated hearing. Upon motion, the Bill was dismissed, and the matter is now on appeal in the Supreme Court (Calendar No. 43339).

The Commission proceeded with the hearing as scheduled. Panhandle again urged dismissal, claiming that the proposed activities constituted interstate commerce, over which the Commission had no control. This question was taken under advisement, with determination thereof held, until all the proofs were submitted. On February 18, 1946, the Commission made its opinion, upholding its jurisdiction, and ordered Panhandle to cease and desist from making direct sales and deliveries to industrial consumers, excepting those at South Lyons and Albion, under special arrangements.



Panhandle filed the within bill of complaint on March 15, 1946, to set aside the above order of the Commission, whereupon Michigan Consolidated intervened, and upon filing of answers, hearing was had on May 13, 1946. The matter was submitted upon a written stipulation of facts and testimony taken before the Commission. Extensive briefs, in excess of two hundred pages, have been presented.

Defendant asked dismissal, claiming that the Commission's order should be reviewed by certiorari, rather than in the nature of a statutory appeal. Defendant's motion to dismiss is denied, under the authority of *National Automobile Transporters Association v. Ingham Circuit Judge*, 279 Mich. 394, wherein it is said:

"It follows that under present statutory provisions a party conceiving himself aggrieved by a holding of the Michigan Public Utilities Commission on questions of fact or questions of law, may have review by bill in equity in the Circuit Court of Ingham County."

[fol. 412] Intervenor states that the question before the Court is as follows:

"Has a 'natural gas company' operating a high pressure natural gas pipe line from Texas and Kansas fields to various points within the State of Michigan, under certificate of public convenience and necessity granted by the Federal Power Commission, and selling its product under requirement contracts and under rates approved by the Federal Power Commission to various public utilities regulated by and operating within the State of Michigan under certificates of public convenience and necessity issued by the Michigan Public Service Commission, the legal right to enter into competition with such public utilities by engaging in the business of selling natural gas by direct sales to present customers of such public utilities and to others operating within their service area, openly soliciting direct sales both within and without the areas served by such public utilities, maintaining an office with the State of Michigan staffed for the purpose of carrying on said business and the solicitation thereof, and openly soliciting franchises for the purpose of taking away the industrial and other busi-

ness of the public utilities, without first qualifying as a public utility in the State of Michigan, obtaining a certificate of convenience and necessity to serve in areas already served by other public utilities, and filing such data, accounts, rates and regulations as are required by the laws of the State of Michigan, and the rules and regulations of the Michigan Public Service Commission?"

[fol. 413] Broadly speaking, this may be the question involved, but we should not overlook the fact that the matter which brought the problem to the Commission was Michigan Consolidated's complaint of the Panhandle-Ford contract. It seems we need only to decide whether the furnishing of gas by Panhandle to Ford is interstate or intrastate in nature, or, to state it differently, is the interstate transportation, sale and delivery of natural gas to an industrial consumer, in wholesale quantities, under contract, subject to the jurisdiction of the Michigan Commission. When, and if, Panhandle enters into a large number of direct industrial contracts, such widespread distribution and its resulting impact may or may not have some bearing in then determining its character.

The Commission urges that because plaintiff has the power of eminent domain and on occasion has asserted such right in this state, and also because it has been authorized to do business in Michigan, it has thereby made itself subject to local control. The Courts have ruled otherwise. In *Ozark Pipe Line Co. v. Monier*, 266 U. S. 555, it is said:

"Nor is it material that appellant applied for and received a Missouri license or that it had power thereunder to exercise the right of eminent domain. These facts could not have the effect of conferring upon the state an authority, denied by the Federal Constitution, to regulate interstate commerce."

To the same effect are *State v. Public Service Commission*, 85 S. W. (2d) 890, and *State v. Shell Pipe Line Corp.*, 135 S. W. (2d) 510.

The point is also made that because the Natural Gas Act denies jurisdiction to the Federal Power Commission [fol. 414] of direct industrial sales it must necessarily

follow that the states possess such jurisdiction. While it is true the Courts have stated that the basic purpose of this legislation (Natural Gas Act) was to occupy the field in which the Barrett and Attleboro cases said the state might not act and that Congress meant to create a comprehensive scheme of harmonious regulation between State and Federal authority, the failure of Congress to confer such power upon the Federal Power Commission does not ipso facto give the states such power. The commerce clause protects, regardless of the inaction of Congress and regardless of the desirability for local regulation. The Court said in *West v. Kansas Natural Gas Co.*, 221 U. S. 229:

"The inaction of Congress is a declaration of freedom from State interference with the transportation of articles of legitimate interstate commerce \* \* \*."

But regardless of the negation of the Federal statute over industrial sales, the Federal Power Commission has asserted jurisdiction of the instant controversy upon the ground, that it is necessary for the Commission "to protect the adequacy of service to its (Panhandle's) customers." Commissioners' Brief, page 16.

One brief asserts that direct sales of gas are subject to state regulation, even though assumed to constitute interstate commerce. With this general statement we agree, with some qualification. But the right of the state to regulate interstate commerce does not include the power to prohibit. The same brief quotes from the case of *Southern Pacific Co. v. Arizona*, 325 U. S. 761, as follows:

"When the regulation of matters of local concern is local in character and effect, and its impact on [fol. 415] the national commerce does not seriously interfere with its operation, and the consequent incentive to deal with them nationally is slight, such regulation has been generally held to be within state authority."

If local regulation may "not seriously interfere" with the operation of interstate commerce, then it may not, under the guise of regulation, prohibit such commerce. Regulation, as we understand the term as herein involved, means the power to prescribe the rules and conditions upon which the interstate commerce shall be conducted. In the in-



stant case the order of the Commission restrains and prohibits the proposed furnishing of gas by Panhandle to Ford. This is the forbiddance, not the regulation of interstate commerce.

The cases decided by the United States Supreme Court and argued extensively in the briefs, beginning with *Public Utilities Commissioner v. Landon*, 249 U. S. 236, through *Panhandle Eastern Pipe Line Co. v. Federal Power Commission*, 324 U. S. 635, have been considered. None decide the specific question here involved. Both sides take comfort in them, and argue that the various determinations lead to the support of their positions. The cases more nearly in point are from other Courts.

In *Sioux City v. Missouri Valley Pipe Line Co.* 46 Fed. (2d) 819, the city sought to enjoin the Pipe Line Company from transporting natural gas from Nebraska into Iowa in order to supply directly packing plants in that city. The Court held that the transaction constituted interstate commerce and that the consent of the city could not be required. The Court said:

"In this situation the question is: may they purchase natural gas in interstate commerce and have it brought [fol. 416] in for their own consumption under particular and private contracts with a concern engaged in such interstate commerce but not engaged in any local public business."

The Court answered the question in the affirmative.

In *Interstate Natural Gas Co. v. Louisiana Public Service Commission*, 34 Fed. Supp. 980, plaintiff sold 99.83 percent of gas brought into the state in interstate commerce, and the Court held that its entire business was not subject to the control of the Louisiana Commission.

In *State ex rel. Cities Service Company v. Mo. Public Service*, 85 S. W. (2d) 890, the Supreme Court of Missouri said:

"In the case at bar, the only reasonable inference to be drawn from the evidence is that the gas is delivered from the foreign state directly to the industrial consumers in this state in compliance with a contract that was in existence between such consumer and the Pipe Line. We think it is immaterial whether the Pipe Line owns all or part of the lateral pipe line

that the gas passes through from the main pipe line to the industry, as it was a continuous movement. It therefore follows that under rules announced in the East Ohio Gas Co. Case, supra, and Missouri ex rel. Barrett v. Kansas Natural Gas Co. supra, that the Pipe Line was engaged in interstate commerce when it was delivering gas to the 12 industries and that the Commission does not have jurisdiction of the Pipe Line on account of these sales, unless it is given jurisdiction on account of other questions hereinafter discussed . . . .

[fol. 417] "We think that the Pipe Line was engaged in interstate commerce and that it was not subject to the jurisdiction of the Commission. From what we have said, it follows that the judgment of the Circuit Court should be reversed."

The United States Supreme Court denied certiorari, 296 U. S. 657.

I am impressed from all the cases that the correct distinction is whether the gas is transported into the local system for subsequent distribution to the public on demand or whether it is transported to a specific customer in wholesale quantities, under contract and without any holding out to supply the public generally.

In the first inst. nce it is intrastate in character, subject to local control, but in the latter it is interstate and is not amenable to local regulation.

The intervenor with much emphasis complains that if Ford is served directly by Panhandle it will lose a potential gross revenue of \$1,600,000.00 a year, which in turn would ultimately be reflected in the rates of domestic users. Dire results are predicted. All this may be true, that problem is not ours, but one for the National Congress, if it is to be controlled at all.

A decree may enter granting the relief prayed for in the bill of complaint. No costs.

Paul G. Eger, Circuit Judge.

[fol. 418] IN CIRCUIT COURT OF INGHAM COUNTY

DECREE—Filed November 16, 1946

At a session of said court held in the court rooms in the City Hall, City of Lansing, Ingham County, Michigan, on the 16th day of November, A. D. 1946.

Present: Hon. Paul G. Eger, Circuit Judge.

This cause having been brought on to be heard upon the bill of complaint filed by plaintiff pursuant to section 11042, Compiled Laws 1929 (MSA 22.45) as amended by Act 261, Public Acts of 1939, and answers thereto, and the proofs having been taken in open court, from which it satisfactorily appears to the court that the material facts charged in the said bill of complaint are true, and the court having considered the arguments of counsel and the briefs filed in support thereof, and being fully advised in the premises, and on motion of Shields, Ballard, Jennings & Taber,

It Is Ordered, Adjudged and Decreed that the order of the Michigan Public Service Commission dated February 18, 1946, shall be and hereby is set aside, reversed and held for naught.

It Is Further Ordered, Adjudged and Decreed that the said Michigan Public Service Commission, its successors, officers, agents and employees, shall be and are hereby permanently restrained from interfering in the sale of natural gas by the Panhandle Eastern Pipe Line Company, its successors or assigns, to the Ford Motor Company or any other industrial consumers in the State of Michigan.

Paul G. Eger, Circuit Judge.

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[fol. 419] IN CIRCUIT COURT OF INGHAM COUNTY

STIPULATION RE RECORD ON APPEAL—Filed March 7, 1947

It is hereby stipulated and agreed by and between the parties to the above entitled cause, by their respective attorneys, that the Settled Case on Appeal, to which this Stipulation is attached, is in form and substance approved by all parties of record to this cause; that the bound volume containing the Stipulation of Facts, the Statement of Evidence and Stipulation, and the exhibits as introduced in evidence at the hearing before the Michigan Public Service



Commission and filed with this Court as part of the record at the time of the hearing of this case, shall be considered as part of the Settled Case on Appeal; that the said volume shall be returned to the Supreme Court as part of the return on this appeal, and that the contents thereof shall be contained in the printed record of this case filed with the Supreme Court.

It is further stipulated and agreed that the following pleadings shall constitute a part of the Record on Appeal and be included in the printed record:

1. Plaintiff's Bill of Complaint.
2. Order of Intervention.
3. Answer of Michigan Public Service Commission.
4. Answer of Michigan Consolidated Gas Company.
5. Plaintiff's Reply to Answer of Michigan Public Service Commission.
- [fol. 420] 6. Plaintiff's Reply to Answer of Michigan Consolidated Gas Company.

(Duly signed by counsel for all parties to this appeal.)

#### IN CIRCUIT COURT OF INGHAM COUNTY

CERTIFICATION BY COURT—Filed March 7, 1947

I, Paul G. Eger, trial judge in the above entitled cause, do hereby certify that the foregoing Case on Appeal contains all parts of the testimony and proceedings in this Court which are necessary to present the questions of law raised by the appellants' statement of reasons and grounds for appeal.

I do further certify that where the testimony and proceedings are not set forth in narrative form but are set forth by question and answer, that it is necessary so to do in order that a full understanding may be had of the questions involved.

I do further order, in accordance with the stipulation of the parties filed herewith, that:

- (1) The bound volume containing the Stipulation of Facts, the Statement of Evidence and Stipulation, and the exhibits as introduced in evidence at the hearing before the Michigan Public Service Commission and

filed with this Court as part of the record at the time of the hearing of this case, shall be considered as a part of the settled case on appeal; that said volume shall be returned to the Supreme Court as part of the return on this appeal, and that the contents thereof shall be contained in the printed record of this case [fol. 421] filed with the Supreme Court.

(2) That the following pleadings in this case shall constitute a part of the record on appeal and be contained in the printed record:

1. Plaintiff's Bill of Complaint.
2. Order of Intervention.
3. Answer of Michigan Public Service Commission.
4. Answer of Michigan Consolidated Gas Company.
5. Plaintiff's Reply to Answer of Michigan Public Service Commission.
6. Plaintiff's Reply to Answer of Michigan Consolidated Gas Company.

Paul G. Eger, Circuit Judge.

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[fol. 422] IN CIRCUIT COURT OF INGHAM COUNTY

CLAIM OF APPEAL OF MICHIGAN CONSOLIDATED GAS COMPANY  
—Filed December 4, 1946

Now comes the above named Michigan Consolidated Gas Company, intervening defendant in said cause, and claims an appeal from the decree entered November 16, 1946, by the Honorable Paul G. Eger, Circuit Judge. Appellant takes general appeal.

• Angell, Turner, Dyer & Meek, Attorneys for Intervening Defendant, 2103-13 Dime Building, Detroit 26, Michigan.

## IN CIRCUIT COURT OF INGHAM COUNTY

CLAIM OF APPEAL OF MICHIGAN PUBLIC SERVICE COMMISSION  
—Filed December 6, 1946

Michigan Public Service Commission, defendant, claims an Appeal from the Decree entered the 16th day of November, 1946, by the Circuit Court for the County of Ingham, In Chancery. Appellant takes a General Appeal.

Foss O. Eldred, Attorney General, by James W. Williams, Assistant Attorney General; James W. Williams, Assistant Attorney General, Attorneys for the Appellant, Michigan Public Service Commission.

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## [fol. 423] IN CIRCUIT COURT OF INGHAM COUNTY

STATEMENT OF REASONS AND GROUNDS OF APPEAL—Filed  
March 7, 1947

1. The Court erred as a matter of law in denying the Motion of the Michigan Public Service Commission to dismiss.

2. The Court erred as a matter of law in holding that the only fact material to decision was the fact that Panhandle Eastern Pipe Line Company had entered into a contract with the Ford Motor Company to supply the latter, in wholesale quantities, with natural gas which had been transported in interstate commerce.

3. The Court erred as a matter of law in determining that the Panhandle Eastern Pipe Line Company agreed to deliver natural gas to the Ford Motor Company in wholesale quantities, inasmuch as the sale was to an ultimate consumer who purchased for consumption and not resale.

4. The Court erred as a matter of law in holding that the sale of natural gas to an ultimate consumer is a wholesale transaction, the purchaser having no intention of reselling the gas.

5. The Court erred as a matter of law in holding that the Commerce Clause of the Federal constitution protects regardless of the inaction of Congress and regardless of the desirability for local regulation of direct sales to ultimate industrial consumers, inasmuch as the direct sales to local



industrial consumers is of peculiar local concern and does not require national uniformity in regulation.

[fol. 424] 6. The Court erred as a matter of law in holding that the physical plant of a pipe line company used for the transmission of natural gas could not at the same time be also used for the distribution of natural gas.

7. The Court erred as a matter of law in refusing to hold that when the Panhandle Eastern Pipe Line Company made deliveries direct to ultimate consumers from its pipe line it was then and there using its pipe line as a distributing facility.

8. The Court erred as a matter of law in failing to hold that when the Panhandle Eastern Pipe Line Company used its pipe line for the purpose of making direct sales and deliveries to industrial ultimate consumers of gas it was acting as a public utility.

9. The Court erred as a matter of law in holding that performing service as a public utility within the State of Michigan is a matter of right, provided only that in rendering such public service the company distribute a commodity which has previously been moved in interstate commerce.

10. The Court erred as a matter of law in holding that because the commodity had first moved in interstate commerce its subsequent distribution to local ultimate consumers was likewise interstate commerce.

11. The Court erred as a matter of law in not holding that the distribution of natural gas to local ultimate consumers is intrastate commerce, even though prior to such distribution there had been a movement of the gas distributed in interstate commerce.

12. The Court erred as a matter of law in failing to hold that any person delivering natural gas to local ultimate consumers within the State of Michigan and holding himself [fol. 425] out as ready and willing to serve all members indiscriminately of the public falling within a certain class or classes is acting as a public utility.

13. The Court erred as a matter of law in holding that when the commodity distributed by a public utility to ultimate consumers has previously been moved in interstate commerce, the utility may serve and deliver such commodity in a municipality in the State already being served by another utility with the same services or commodity with-

out first being required to obtain a certificate of public convenience and necessity, in accordance with the provisions of Act 69 of the Public Acts of 1929.

14. The Court erred as a matter of law in failing to find that the Panhandle Eastern Pipe Line Company is a corporation owning or operating in this State equipment or facilities for producing, generating, transmitting, delivering or furnishing gas to or for the public for compensation.

15. The Court erred as a matter of law in failing to find that the Panhandle Eastern Pipe Line Company holds itself out as ready and willing to make direct industrial sales to any industries within reasonable reach of its transportation facilities, provided only that the quantities of gas used by any given customer be sufficiently large and the price paid such as to make the transaction profitable to the Panhandle Eastern Pipe Line Company, and that the contract for the direct sale of gas to the Ford Motor Company was made in furtherance of such policy.

16. The Court erred as a matter of law in failing to find that the direct sale and delivery of gas to local industrial consumers is furnishing of gas to the public for compensation.

[fol. 426] 17. The Court erred as a matter of law in not holding that the rendering of service as a public utility may be made a matter of privilege by the State, which privilege shall be granted upon the establishment of certain facts.

18. The Court erred as a matter of law in not holding that by the provisions of Act 69 of the Public Acts of 1929, the people of the State of Michigan had made the rendering of service as a public utility a matter of privilege and not a matter of right, and that so long as the Act was applied without discrimination alike to interstate and intrastate companies, the Act violated no provision of the State or Federal constitutions.

19. The Court erred as a matter of law in finding that the Panhandle Eastern Pipe Line Company does not hold itself out to supply the public generally.

20. The Court erred as a matter of law in restraining the Michigan Public Service Commission, its successors, officers, agents and employees, permanently from interfering in the sale of natural gas by the Panhandle Eastern Pipe Line Company, its successors, or assigns, to the Ford

Motor Company, or any other industrial consumers in the State of Michigan; the jurisdiction of the Court being limited to the vacating and setting aside of the particular order of the Michigan Public Service Commission then and there under review, namely; the order of the Michigan Public Service Commission, dated February 18, 1946, directed to the Panhandle Eastern Pipe Line Company, requiring that company to cease and desist from making direct sales and deliveries of natural gas to industries within the State of Michigan located within municipalities already being served by a public utility, until such time as it shall have first obtained a certificate of public convenience [fol. 427] and necessity from the Michigan Public Service Commission to perform such services.

21. The Court erred as a matter of law in setting aside, reversing and holding for naught, the order of the Michigan Public Service Commission, dated February 18, 1946, directed to the Panhandle Eastern Pipe Line Company, requiring that company to cease and desist from making direct sales and deliveries of natural gas to industries within the State of Michigan located within municipalities already being served by a public utility, until such time as it shall have first obtained a certificate of public convenience and necessity from the Michigan Public Service Commission to perform such services.

22. The Court erred as a matter of law in failing to hold that the doing of a public utility business is a privilege, the exercise of which may be conditioned upon the obtaining from proper governmental authorities of a certificate, franchise or license, and the enjoyment of which may be restricted to persons who have obtained such certificates, franchises or licenses.

23. The Court erred as a matter of law in failing to find that the delivery of gas under the contract between Panhandle Eastern Pipe Line Company and the Ford Motor Company was to be at the convenience of the Ford Motor Company, the pack of gas in the pipe line of the Panhandle Eastern Pipe Line Company to serve the same function under such an arrangement as gas in a storage tank belonging to the Panhandle Eastern Pipe Line Company.

24. The Court erred as a matter of law in failing to find that, in delivering gas under the contract with the Ford



Motor Company, there would be a stoppage between the [fol. 428] transportation of gas within the State of Michigan and its delivery to the Ford Motor Company, which stoppage would break the continuity of the interstate movement.

25. The Court erred as a matter of law in holding that, even in the absence of any act by the United States Congress, direct sales to ultimate industrial consumers of natural gas, which had moved in Interstate commerce, are beyond State regulation, solely because of the prohibitive force of the Commerce Clause of the Federal constitution.

26. The Court erred as a matter of law in failing to find that the Panhandle Eastern Pipe Line Company had a uniform policy to make direct sales to industrial consumers located in the several states traversed by its natural gas pipe line; that the company intended to carry out such policy within the State of Michigan; and, that the contract between the Panhandle Eastern Pipe Line Company and the Ford Motor Company was an overt act in the carrying out of such a policy and such an intent.

27. The Court erred as a matter of law in failing to find that the Panhandle Eastern Pipe Line Company had a uniform company policy to make direct sales to industrial consumers located in the State of Michigan; and that, in carrying out such policy and such intent, maintains a new business department for obtaining new business through direct sales of gas to industrial customers, which department has an office located in the City of Detroit, and has solicited direct industrial business in the State of Michigan, which department, in the spring of 1945, made an industrial survey of the City of Detroit, calling upon at least fourteen [fol. 429] large industrial users of gas in the Detroit area and solicited customers.

28. The Court erred as a matter of law in disregarding the difference in factual situations which at some future time may be present in a given sales arrangement between the Panhandle Eastern Pipe Line Company and one or more of its direct industrial customers located within the State of Michigan; and, in assuming to restrain the Michigan Public Service Commission, in perpetuity and permanently, regardless of the factual situation at the time when a given case may arise, and regardless of whether such

sales are in inter or intrastate commerce, from interfering with such sale, regardless of whether or not such interference be through legal or illegal action on the part of the Commission.

James W. Williams, One of the Attorneys for the Michigan Public Service Commission. Angell, Turner, Dyer & Meek, Attorneys for the Michigan Consolidated Gas Company.

[fol. 429a] IN CIRCUIT COURT OF INGHAM COUNTY

CALENDAR ENTRIES

1946

- Mar. 15. Bill of complaint, filed.
- Mar. 15. Summons issued.
- Mar. 18. Summons returned, filed.
- Mar. 27. Stipulation and order to intervene, filed.
- Apr. 9. Answer of the defendant commission, filed.
- Apr. 12. Answer of the Intervenor, Michigan Consolidated Gas Company, filed.
- Apr. 24. Reply of plaintiff to Answer of defendant Commission, filed.
- Apr. 24. Reply of plaintiff to answer of Intervenor, Michigan Consolidated Gas Company, filed.
- May 13. Complaint of Michigan Consolidated Gas Company before Michigan Public Service Commission, filed.
- May 13. Order to show cause, issued by Michigan Public Service Commission on December 21, 1945, filed.
- May 13. Special appearance for and motion to dismiss on behalf of Panhandle Eastern Pipe Line Company before the Michigan Public Service Commission, filed.
- May 13. Notice of adjournment of proceedings before Commission from December 21, 1945, to January 7, 1946, filed.
- May 13. Proceedings before the Michigan Public Service Commission at Detroit on January 17, 1946, filed.
- May 13. Proceedings before the Michigan Public Service Commission at Detroit on February 14 and 15, 1946, filed.
- [fol. 429b] May 13. Certified Copy of Commission's Opinion and Order to Cease and Desist, filed.
- May 13. Stipulation of facts, statement of evidence and Exhibits filed in the matter of the Michigan Consolidated

Gas Company concerning the direct sales of natural gas by Panhandle Eastern Pipe Line Company to the Ford Motor Company, filed.

May 13. Opinion No. 130 of the Federal Power Commission dated March 14, 1946, filed.

Oct. 9. Opinion of the Court, filed.

Nov. 6. Clerk's Notice of Entry of Opinion of Court, filed.

Nov. 16. Decree and notice of hearing, filed.

Nov. 19. Notice of entry of decree, filed.

Nov. 26. Clerk's notice of entry of decree, filed.

Dec. 4. Claim of Appeal, filed.

Dec. 4. Proof of service of claim of appeal, filed.

Dec. 6. Claim of appeal, notice of claim of appeal and proof of service, filed.

Dec. 9. Stipulation and motion for extension of time for settlement of case on appeal, filed.

Dec. 9. Order granting extension of time for settling case on appeal, filed.

#### 1947

Mar. 7. Stipulation of the parties concerning material to be included in the record, filed.

Mar. 7. Statement of the reasons and grounds of appeal and settled record and case on appeal, filed.

Mar. 11. Return made to Supreme Court.



[fol. 430]

**Exhibits Attached to Stipulation of Evidence****EXHIBIT "H-1"**

Letter of G. B. Pidot to William L. Glenn,  
dated June 5, 1941

Wm. L. Glenn, Esquire, 44 Wall Street, New York, N. Y.

DEAR MR. GLENN:

Re: Proposed Gas Contract Between Panhandle Eastern Pipe Line Company and Central Indiana Gas Company

A few days ago I discussed with Mr. Ransom of Panhandle a suggested provision to be inserted in the subject contract, which reads as follows:

"Eastern agrees that it will not directly, or through subsidiary, associated or affiliated companies, sell natural gas to any customer or consumer for use or resale by such customer or consumer, within the Municipalities without the consent of Central Indiana."

He referred the matter to you for consideration on the ground that it involves some point of law. The suggested provision is self-explanatory. Its purpose is simply to protect the purchaser against competition from the seller with respect to service in the purchaser's restricted service area, since the purchaser is contracting to purchase all of its natural gas requirements from the Seller. This provision appears verbatim in another gas supply contract recently negotiated with another pipe line company and on file with the Federal Power Commission.

I believe that the interested companies desire to conclude this contract at the earliest possible date and I shall appreciate hearing from you at your earliest convenience.

Yours very truly,

(S.) G. B. Pidot.

**Exhibit I**

**Copy of contract between Panhandle Eastern Pipe Line Company and Central Indiana Gas Company, dated July 31, 1941**

This Agreement, made and entered into this 31 day of July, 1941, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter called "Eastern," and Central Indiana Gas Company, a corporation of the State of Indiana, hereinafter called "Central Indiana."

Witnesseth, that in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

**Article I****Definitions**

Except where the context otherwise indicates another or different meaning or intent, the following terms are [fol. 432] intended and used and shall be construed to have meanings as follows:

1. The term "Day," wherever used in this agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at 7:00 o'clock A. M. Central Standard Time.

2. The term "Month," wherever used in this agreement shall mean the period beginning at 7:00 o'clock A. M. Central Standard Time on the first day of a calendar month and ending at 7:00 o'clock A. M. Central Standard Time on the first day of the next succeeding calendar month.

3. The term "Special Industrial Customer" shall mean an industrial customer of Central Indiana agreeing to purchase gas under a contract with Central Indiana providing for the curtailment or interruption of delivery of gas in the event of an insufficiency in the supply of Eastern's gas available for such delivery.

4. The term "Off-Peak Customer" shall mean an industrial customer of Central Indiana agreeing to purchase gas under a contract with Central Indiana providing for the curtailment or interruption of delivery of gas in the event of an insufficiency in the supply of Eastern's gas available for such delivery and whose entire gas requirements, for

the particularly specified purposes for which such delivery is to be made, are limited to Off-Peak periods.

5. The term "Off-Peak Period" shall mean the period from April to October, inclusive, of each year.

6. The term "Firm Gas" shall mean all gas sold and delivered hereunder other than gas for Special Industrial Customers and Off-Peak Customers.

[fol. 433] 7. The term "The Municipalities" shall mean (1) the entire territory included within the corporate limits of each of the communities in the State of Indiana now served by Central Indiana, (2) the environs of each of said communities, including therein the entire territory within a zone contiguous to and completely surrounding the corporate limits of each of said communities, which territory Central Indiana can reasonably serve from the distribution mains and future extensions thereof of such communities, and (3) all territory outside of that covered in (1) and (2) and now being served by Central Indiana.

## Article II

### Scope of Agreement

1. Subject to the provisions of Sections 2 and 3 of Article II hereof, Eastern agrees to sell and deliver to Central Indiana, and Central Indiana agrees to purchase and receive from Eastern, natural gas for all of the natural gas requirements of Central Indiana during the period of the first three years of the term of this agreement, and, thereafter, natural gas for all of the gas requirements of Central Indiana for distribution and resale to any and all of its present and future customers and for Central Indiana's own use in The Municipalities. In no event, however, shall Eastern be required to supply hereunder in any one day more than 150,000 therms of firm gas; nor shall Eastern be required to deliver through point of delivery (c) of Section 2 of Article X an amount exceeding the gas requirements of Elwood, Summitville, Alexandria and Frankton, Indiana, or through Point of Delivery (b) of Section 1 of Article X an amount exceeding the gas requirements of Fairmount, Marion, Gas City, Upland and Jenesboro, Indiana.

[fol. 434] 2. Central Indiana agrees promptly to make all reasonable efforts to procure all necessary permits and authorizations from governmental authorities for changing



the service in The Municipalities from mixed gas to straight natural gas and, to the extent that it is able to procure the same, it will make adjustment of not less than approximately one-third of all of its distribution facilities and customers' appliances in The Municipalities during each of the first three years of this agreement in order to convert said facilities and appliances to the use of straight natural gas and shall complete all of such adjustments within said three year period, and thereafter, to the extent that it has secured such permits and authorizations, Central Indiana shall receive and distribute only natural gas to all of its customers in The Municipalities.

3. All deliveries of gas hereunder by Eastern to Central Indiana for resale to Special Industrial Customers or Off-Peak Customers, as herein defined, shall be subject to curtailment or interruption whenever, in Eastern's judgment, such gas is needed to meet the requirements of customers receiving service, directly or indirectly, from Eastern's pipe line system, under classifications or contracts providing for an uninterruptible supply of gas.

4. Whenever Central Indiana has a prospective Special Industrial Customer or Off-Peak Customer, Central Indiana shall submit to Eastern, for its examination, any contract or arrangements which Central Indiana proposes to make with such customer and shall also furnish Eastern with the name and location of such customer, a description of the purpose or purposes for which such gas is to be utilized, the business in which the customer is engaged and estimates [fol. 435] of monthly and maximum daily gas requirements. If in Eastern's judgment, (based on all factors which it considers pertinent), Eastern is able to supply Central Indiana with gas for resale to such customer then Eastern shall so indicate to Central Indiana, in writing, and thereafter shall sell and deliver gas to Central Indiana for the purpose of resale to such proposed customer upon the terms and conditions of this agreement governing sales and deliveries of gas for such purposes and for such customers. It is specifically provided, however, that as to the following specifically named Special Industrial Customers and Off-Peak Customers now being served by Central Indiana, no written expression of willingness on Eastern's part to supply gas shall be required, Eastern hereby expressly indicating such willingness to supply Central Indiana with gas

for resale to all such present customers, at their plants presently being so served, upon the terms and conditions of this agreement governing sales and deliveries of gas for such purposes and for such customers:

**Special Industrial Customers:**

Name	Location of Plant
Armstrong Cork Company, Hart Glass Division	Dunkirk, Indiana
Ball Brothers Company	Muncie, Indiana
Delco-Remy Division of General Motors	Anderson, Indiana
Delco-Remy Division of General Motors	Muncie, Indiana
Foster Forbes Glass Company	Marion, Indiana
Indiana Steel and Wire Company	Muncie, Indiana
[fol. 436]	

Johns-Manville Products Corp.	Alexandria, Indiana
The National Tile Company	Anderson, Indiana
Owens-Illinois Glass Company	Muncie and Gas City, Indiana
Slick Glass Corporation	Gas City, Indiana
Sneath Glass Company, For glass melting and auxiliary uses only	Hartford City, Indiana
The Warfield Company, Sterling Glass Division	Lapel, Indiana

**Off-Peak Customers:**

Eaton Canning Company	Eaton, Indiana
General Motors Corporation, Guide Lamp Division	Anderson, Indiana
Johns-Manville Products Corp.	Alexandria, Indiana

**Article III**

**Term of Agreement**

This agreement shall extend for a fixed term from the 1st day of August, 1941 to December 31, 1951, and unless then terminated by notice given by one of the parties hereto to the other party hereto, at least twelve (12) months prior to said date of December 31, 1951, shall continue thereafter

until terminated by either party at any time upon twelve (12) months' prior notice to the other.

#### Article IV

##### Quality

1. Eastern agrees that the gas delivered hereunder shall be natural gas; provided, however, that: (a) Said natural gas at all times shall comply with the requirements as to purity expressed in this agreement; (b) Eastern may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane or other hydrocarbons (excepting methane) from said natural gas or may increase or reduce the heat content of said natural gas before delivery thereof; and (c) Eastern may subject or permit the subjection of the gas to compression, cooling, cleaning or other processes to such an extent as may be required in its transmission from the wells to the Point or Points of Delivery subject to Eastern's obligations under Section 2 hereof.

2. All gas delivered hereunder shall at all times be merchantable and insofar as practicable:

(a) Shall be commercially free from solid or liquid matter, dust, gum, or gum-forming constituents;

(b) Shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet;

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet;

(d) Shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas in the pipe line at a point approximately fifty (50) feet in advance of meter inlet headers at or near the Points of Delivery and that water shall not be present in liquid phase.

3. The gas delivered hereunder is assumed but not guaranteed to have a total heating value of one thousand (1000) British thermal units per cubic foot. In no event shall the total heating value of the gas delivered hereunder fall below [fol. 438] nine hundred fifty (950) British thermal units per cubic foot nor exceed one thousand sixty (1060) British thermal units per cubic foot.



## Article V

### Measurements

1. The unit of the gas deliverable under this agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

3. Measurements of volume and heat value of gas delivered by Eastern to Central Indiana hereunder shall be at the following points:

#### Volume

(a) The volume of gas so delivered shall be measured at the meter or meters located at or near the Points of Delivery.

#### Heat Value

(b) The heat value of the gas delivered by Eastern hereunder shall be determined by a calorimeter of Eastern located at Eastern's Glenarm Compressor Station or at such other place as may be agreed upon between the parties.

[fol. 439] 4. The measurement of volume and heat value of all gas delivered hereunder shall be made in the following manner:

#### Volume

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, shall be one (1) cubic foot of gas saturated with water vapor at a base temperature of sixty (60) degrees Fahrenheit and a base pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Points of Delivery above sea level or

variations in such atmospheric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(d) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas and thereafter monthly as near the first of the month as practicable or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's law, at the pressures under which said natural gas is [fol. 440] delivered hereunder, shall be determined by tests at intervals of three (3) months or as much oftener as is found necessary in practice. The results of such tests shall be used in determining the correction to be used in computing the volume of natural gas delivered hereunder.

### Heat Value

The total heating value of the gas per cubic foot, as defined in Section 4 (a) above shall be determined by taking the arithmetic average from the daily record of the recording calorimeter of Eastern, such recording calorimeter to be checked twice each month, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau.

## Article VI

### Measuring Equipment

1. Eastern shall install, maintain and operate, or cause to be installed, maintained and operated, at its own expense, meters and necessary measuring equipment at or near the Points of Delivery at which it delivers gas to Central Indiana hereunder.

2. Central Indiana may install, maintain and operate such check measuring equipment as it shall desire provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters through which Eastern delivers gas at or near the Points of Delivery. Eastern shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be [fol. 441] done only by the employees or agents of Central Indiana.

3. The parties hereto shall have the right to be present at their election at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring or check-measuring deliveries hereunder and each of the parties shall advise the other of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the owner, but upon request will submit to the other records and charts, together with the calculations therefrom, for the other's inspection and verification, subject to return within ten (10) days after receipt thereof.

4. All installations of measuring equipment applying to or affecting deliveries hereunder shall be made in such manner as to permit an accurate determination of the quantity of gas to be delivered and ready verification of the accuracy of measurement. Reasonable care shall be exercised by each party in the installation, maintenance and operation of pressure regulating equipment so as to avoid, so far as practicable, any inaccuracy in the determination of the amount of gas delivered hereunder.

5. If for any reason meters are out of service or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon on the basis of the best data available, using the first of the following methods which is feasible:

[fol. 442] (a) By using the registration of any check meter or meters if installed and accurately registering;

(b) By correcting the error if the percentage of



error is ascertainable by calibration, test, or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

6. From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of Eastern's measuring equipment shall be verified at Eastern's expense in the presence of representatives of both Eastern and Central Indiana and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that it desires a special test of any meter the parties shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

7. If, upon test, any measuring equipment is found to be not more than two (2) per cent fast or slow, previous readings of such equipment shall be considered correct in computing the deliveries of gas hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding two (2) per cent, at a reading corresponding to the average hourly rate of flow [fol. 443] for the period since the last preceding test, then any previous readings of such equipment shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

8. Each party hereto shall cause to be preserved for a period of at least five (5) years all test data, charts and other similar records.

## Article VII

### Rate and Computation of Bills

1. For all gas purchased by Central Indiana from Eastern hereunder, the prices shall be as follows:

A. Firm Deliveries Made under and Pursuant to Section 1 of Article II.

#### Part 1.

Three (3) cents per therm for all gas delivered hereunder during the four (4) months period June to September, both inclusive, of any year.

#### Part 2.

For all gas delivered hereunder, each month, during the eight (8) months period October to May, both inclusive:

(a) Three (3) cents per therm for the number of therms equal to the average number of therms delivered per day during the immediately preceding four (4) months period June to September, both inclusive, [fol. 444] multiplied by the number of days in the current billing month.

(b) Four (4) cents per therm for all gas delivered in excess of the quantity specified in paragraph (a) of this Part 2.

B. Special Industrial Deliveries Made Under and Pursuant to Section 4 of Article II.

Eighty (80) per cent of the amounts billed by Central Indiana to each of its customers; provided, however, that the price to be paid, by Central Indiana to Eastern, shall not be less than the following:

(a) Two and one-tenth (2.1) cents per therm for gas delivered for resale to each customer using six hundred thousand (600,000) therms or less, during any month.

(b) One and nine-tenths (1.9) cents per therm for gas delivered for resale to each customer using in excess of six hundred thousand (600,000) therms, during any month.

**C. Off-Peak Deliveries Made Under and Pursuant to Section 4 of Article II.**

One and one-half (1.5) cents per therm.

2. Eastern agrees that in case it shall sell to any distributor in the State of Indiana for resale in such state firm gas (except from local production) under a gate rate schedule other than existing schedules, it shall tender the same schedule of rates to Central Indiana.

[fol. 445]

**Article VIII**

**Billing**

1. On or before the seventh day of each month Central Indiana shall render to Eastern a statement showing for the preceding calendar month, the number of cubic feet of natural gas (based on the unit of volume specified in Article V hereof) and the quantity of therms calculated from meter readings and charts to have been delivered to each of Central Indiana's Special Industrial Customers and Off-Peak Customers, and said statement shall include the amounts billed by Central Indiana to its Special Industrial Customers

2. On or before the twelfth day of each month Eastern shall render or cause to be rendered to Central Indiana a statement showing the total volume and number of therms delivered by Eastern to Central Indiana under this agreement during the preceding month and payment then due from Central Indiana to Eastern with complete data and computations showing the procedure by which the same were determined.

3. Each of the parties shall have the right to examine at reasonable times books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this agreement.

**Article IX**

**Payments**

1. Central Indiana agrees to pay Eastern, at its designated office, on or before the twentieth day of each calendar month, for the natural gas delivered by Eastern to Central



Indiana hereunder during the preceding calendar month, [fol. 446] according to the measurements, computations, and prices herein provided and billed by Eastern in the statement for said month.

2. Should Central Indiana fail to pay the amount of any bill for gas rendered by Eastern, as herein provided, when such amount is due, interest thereon shall accrue at the rate of six (6) per cent per annum from the due date until the date of payment. If such failure to pay continues for thirty (30) days after payment is due, Eastern, in addition to any other remedy it may have hereunder, may suspend further delivery of gas until such amount is paid; provided, however, that if Central Indiana, in good faith, shall dispute the amount of any such bills or parts thereof, and shall pay to Eastern such amounts as it concedes to be correct and at any time thereafter within thirty (30) days of a demand made by Eastern shall furnish a good and sufficient surety bond, in amount and with sureties satisfactory to Eastern, conditioned upon the payment of any amounts ultimately found due upon such bills after a final determination, which may be reached either by agreement or judgment of the courts as may be the case, then Eastern shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

3. If presentation of a bill by Eastern is delayed after the twelfth day of the month, then the time of payment shall be extended accordingly unless Central Indiana is responsible for such delay.

4. If either Central Indiana or Eastern shall find at any time within twelve (12) months from the date of any statement rendered by Eastern hereunder that there has been [fol. 447] an overcharge or an undercharge in the amount billed in such statement, and if a claim therefor shall have been made within sixty (60) days from the date of discovery thereof, Central Indiana or Eastern, as the case may be, shall pay the principal of such overcharge or undercharge with interest thereon at the rate of six (6) per cent per annum from date of payment of such overcharge or undercharge, such payment to be made within thirty (30) days from the determination thereof, provided, however, that Central Indiana shall be entitled to recover such overcharge only if it shall have paid it.

## Article X

### Points of Delivery

1. The Points of Delivery for all gas to be delivered by Eastern to Central Indiana hereunder, subject to the option vested in Central Indiana under Section 2 of Article X hereof, shall be at the outlet sides of measuring stations at the points of connection between the facilities of Michigan Gas Transmission Corporation and Central Indiana, which said points of connection are at the following places:

(a) That point now commonly known, by the parties hereto, by the name and style of "King Station," which said King Station is located at a point approximately 243 feet west of the northeast corner of the northwest quarter of Section 24, Township 20 North, Range 10 East, in Center Township, Delaware County, Indiana.

(b) That point where Michigan Gas Transmission Corporation's pipe line, known as "Line C," crosses Central Indiana's pipe line, known as "Line Z-60," [fol. 448] which said point is located in the north 69.25 acres of the north one-half of the northeast quarter of Section 4, Township 22 North, Range 8 East, in Fairmount Township, Grant County, Indiana.

(c) Lot No. 50 in Woodward's Second Addition to the Town of Lapel, Indiana, located on the west side of Vine Street, South of 6th Street, North of Pendleton Avenue, at which point deliveries of gas will be made to Central Indiana for resale to the Warfield Company.

2. In addition to the aforementioned Points of Delivery, Central Indiana, at its option and upon giving three (3) months' prior written notice to Eastern, may direct delivery of gas hereunder to be made at the outlet sides of measuring stations to be constructed or caused to be constructed by Eastern at Points of Connection between facilities of Michigan Gas Transmission Corporation and Central Indiana at any one or more of the following places to be selected by Central Indiana:

(a) That point where Michigan Gas Transmission Corporation's pipe line, known as "Line B," now

crosses Central Indiana's pipe line, known as "Line 51," in Salem Township, Delaware County, Indiana, the same point being on the west section line of Section 17, Township 19 North, Range 9 East, at approximately the one-half section line of said section.

(b) At a point South of the City of Anderson, Indiana, on Michigan Gas Transmission Corporation's pipe line, known as "Line B," which said point is located near the northeast corner of the southeast one-[fol. 449] quarter of Section 31, Township 19 North, Range 8 East, in Anderson Township, Madison County, Indiana.

(c) That point southeast of Elwood, Indiana, where Michigan Gas Transmission Corporation's pipe line, known as "Line C," crosses Central Indiana's pipe line, known as "Line 171," which said point is located in Section 26, Township 21 North, Range 6 East, in Madison County, Indiana.

## Article XI

### Possession of Gas

1. As between the parties hereto, Eastern shall be deemed to be in control and possession of the gas to be delivered by Eastern to Central Indiana hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Central Indiana at the points of delivery after which Central Indiana shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims, or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the Point of Delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

## Article XII

### Pressure

Eastern agrees to furnish gas hereunder at such pressure as Central Indiana may require, up to but not exceed-[fol. 450] ing one hundred (100) pounds to the square inch



gauge pressure at the Points of Delivery. Central Indiana agrees to install, operate and maintain such regulating devices as may be necessary to regulate the pressure of the gas delivered by Eastern hereunder.

### Article XIII

#### Warranty of Title to Gas

Eastern agrees that it will and hereby does warrant generally the title to all gas delivered by it under this agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims.

### Article XIV

#### Force Majeure

1. Neither party shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

[fol. 451] 2. Such causes or contingencies affecting the performance of this agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve either party from its obligations to make payments of amounts then due hereunder.

crosses Central Indiana's pipe line, known as "Line 51," in Salem Township, Delaware County, Indiana, the same point being on the west section line of Section 17, Township 19 North, Range 9 East, at approximately the one-half section line of said section.

(b) At a point South of the City of Anderson, Indiana, on Michigan Gas Transmission Corporation's pipe line, known as "Line B," which said point is located near the northeast corner of the southeast one-[fol. 449] quarter of Section 31, Township 19 North, Range 8 East, in Anderson Township, Madison County, Indiana.

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2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims, or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the Point of Delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

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[fol. 451] 2. Such causes or contingencies affecting the performance of this agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve either party from its obligations to make payments of amounts then due hereunder.



## Article XV

## Miscellaneous

1. No modification of the terms and provisions hereof shall be or become effective, except by the execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Any company which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of Eastern or of the gas distribution system of Central Indiana, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this agreement, but otherwise neither party shall assign this agreement or any of its rights hereunder unless it first shall have obtained the consent thereto of the other party.

4. Except as otherwise herein provided any notice, request, demand, statement, or bill provided for in this agreement shall be in writing and shall be duly delivered when [fol. 452] mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

## Eastern:

Panhandle Eastern Pipe Line Company  
1221 Baltimore Avenue  
Kansas City, Missouri.

## Central Indiana:

Central Indiana Gas Company  
Muncie, Indiana.

or at such other address as either party shall designate by formal written notice in accordance herewith for the purpose, except that routine communications (including monthly statements and payments) shall be duly delivered when mailed by either registered or ordinary mail.

5. Eastern agrees that in respect of the cost to Central Indiana of installing gas service and the expense and outlay

of Central Indiana in changing over its distribution systems and customers' appliances to adapt them to the distribution and use of natural gas, Eastern will pay Central Indiana an amount equal to One Dollar (\$1.00) per customer for every metered customer of Central Indiana changed over before the 31st day of July, 1944, such payments to be made at monthly intervals commencing with the month next succeeding the month in which change-overs are complete and upon statements by Central Indiana to Eastern.

6, This contract is subject to valid orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

[fol. 453] In witness whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties)

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Exhibit J—Page 1

Letter of Panhandle Eastern Pipe Line Company to Mr. Guy T. Henry, dated August 28, 1941

August 28, 1941.

Mr. Guy T. Henry, President,  
Central Indiana Gas Company,  
Muncie, Indiana.

Dear Mr. Henry:

Since our conference at Chicago I have given considerable attention to the matter of amending the proposed contract between our respective companies in such manner that the same will meet with the approval of our Board. I have discussed your situation with respect to commitments to certain industrial customers with Mr. Creveling, and as a result of these discussions Mr. Creveling indicates to me that if the term of the proposed contract is amended, as set forth in the attached letter form of amendment, he is

confident that the Board will approve the same. I have used the date of expiration of your industrial contracts which you gave me verbally during our conference.

[fol. 454] May I suggest that you give consideration to this amendment and, if satisfactory to you, sign and return both copies of the proposed amendment to me. Thereupon we will present the contract, as amended, to our board with recommendations for approval.

Also, in order to show the proper justification for the modification of the term suggested by our Board, I would appreciate it very much if you will send me a verified or photostatic copy of your contractual commitments. If I have erred in some of these dates, I suggest that you insert the correct dates before executing this instrument.

Yours very truly, (S.) G. J. Neuner.

Exhibit "J"—Page 2

Letter of Parhandle Eastern Pipe Line Company to Central Indiana Gas Company, dated August 28, 1941

Central Indiana Gas Company,  
Muncie, Indiana.

Attention: Mr. Guy T. Henry, President.

Gentlemen:

As previously advised, our Board of Directors, at a meeting held on August 18th, failed to take favorable action with respect to the approval of the proposed gas contract between us dated July 31, 1941. However, it was indicated that if a reasonable limit were placed on the term of said contract with respect to the sale of gas for resale to Special Industrial Customers and Off-Peak Customers, the contract [fol. 455] probably would meet with the approval of the Board. You have represented to us that you are now committed to certain of your Special Industrial and Off-Peak Customers for terms exceeding one year from and after August 1, 1941. We are willing to recommend to the Board that these obligations be recognized.

Therefore, we propose that Article III of the contract be amended to read as follows:



## Amended Article III

## Term of Agreement

"This agreement, with respect to the sale and delivery by Eastern and the purchase by Central Indiana of gas covered hereunder, except gas for resale to Special Industrial Customers and Off-Peak Customers, shall extend for a fixed term from the first day of August, 1941 to December 31, 1951, and unless then terminated by notice given by one of the parties hereto to the other party hereto, at least twelve (12) months prior to said date of December 31, 1951, shall continue thereafter until terminated by either party at any time upon twelve (12) months' prior notice to the other.

"With respect to gas for ultimate resale to Special Industrial Customers and Off-Peak Customers, this agreement shall extend for a fixed term from the first day of August, 1941 to July 31, 1942, and, unless then terminated by notice given by one of the parties hereto to the other party hereto at least sixty days prior to said date of July 31, 1942, shall continue thereafter until terminated by either party at any time upon six months' prior notice to the other; provided that Eastern hereby agrees that, with respect to the following [fol. 456] named Special Industrial Customers, it will not terminate this contract prior to the dates of expiration of Central Indiana's existing contracts with said customers, which expiration dates Central Indiana represents are the dates set opposite the respective names of such customers as follows:

Name of Customer	Location of Plant	Date
Armstrong Cork Company,		
Hart Glass Division	Dunkirk, Indiana	July 31, 1944
Ball Brothers Company	Muncie, Indiana	July 31, 1946
Foster-Forbes Glass Company	Marion, Indiana	July 31, 1946
Owens-Illinois Glass Company	Muncie, Indiana	July 31, 1944
Slick Glass Company	Gas City, Indiana	July 31, 1946
Sneath Glass Company	Hartford City, Indiana	July 31, 1944
The Warfield Company,		
Sterling Glass Division	Lapel, Indiana	July 31, 1946"

If you are agreeable to amending the terms of said contract in the manner and to the extent aforesaid, please indicate your acceptance on a copy of this letter at the place indicated and we will thereupon submit the same to our Board of Directors with recommendations for approval. If,

and when, so approved, you will be duly advised thereof, and thereupon this letter shall constitute and become a valid amendment of said gas contract.

Yours very truly, Panhandle Eastern Pipe Line Company by ———, Vice President.

Accepted this — day of ———, 1941. Central Indiana Gas Company by ———, President.

[fol. 457]

Exhibit "K"

Petition of the Central Indiana Gas Company under the Natural Gas Act, as amended, for an order approving a schedule of rates for natural gas.

To The Federal Power Commission,  
Washington, D. C.:

Comes Central Indiana Gas Company, a corporation of the State of Indiana, having its principal place of business and post office address at 300 East Main Street, Muncie, Indiana, herein called "Petitioner," and, pursuant to the Natural Gas Act, as amended, hereby petitions for an order providing that a schedule of rates, described below, for the sale of natural gas from the Panhandle Eastern Pipe Line Company, herein called "Panhandle", to the Petitioner, be made effective, and in support thereof respectfully shows:

1. Petitioner is a public utility engaged in the manufacture, purchase and distribution to the public at retail only of natural and mixed gas, serving the municipalities of Muncie, Marion, Anderson and 19 additional communities, involving a population of about 166,000 and about 31,500 customers, all located in a concentrated area within the State of Indiana, subject to the jurisdiction of the Public Service Commission of the State of Indiana as to rates, accounting, the issuance of securities, etc. Petitioner has been rendering such service continuously since 1888 and is under duty at law to serve all consumers in its area of service.

[fol. 458] 2. Petitioner has been purchasing from Panhandle\* all of its natural gas requirements continuously since November 16, 1931.

\* Or a predecessor or affiliate company.

To August 1, 1941, such gas service was pursuant to contract dated May 13, 1931, as amended and supplemented (herein called the "old contract"),\*\* and thereafter, pursuant to contract between the Petitioner and Panhandle, dated July 31, 1941 (herein called the "new contract"), a copy thereof having been filed by Panhandle with the Commission on August 5, 1941. Attached hereto, marked exhibit A and made a part hereof is a photostated copy of said contract.\*\*\*

Since Michigan Gas Transmission Corporation (herein called "Michigan") is now a wholly-owned subsidiary of Panhandle, the facilities of both companies are used in the transportation and sale of natural gas to the Petitioner, and Panhandle has intended, according to its statement issued June 30, 1941 and filed with the Federal Power Commission,\*\*\*\* to render gas service to utilities formerly served by Michigan, the two companies are, with respect to natural gas service to the Petitioner, one and the same.

3. Panhandle is now serving certain distributing companies within the State of Indiana under rate schedules designated by Panhandle as Gd-1, Rd-1, and RD-2,\*\*\*\* [fol. 459] which, Petitioner is informed, were intended to be available to distributing companies in Indiana, such as the Petitioner. The rates provided in said schedules are the same as the rates provided in the new contract.

The localities in Indiana now served by Panhandle through such distributing companies are in the same general area as the localities served by the Petitioner, and there is no basis for the present difference in rates between these localities. The rates under which natural gas is now

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\*\* A copy thereof is on file with the Commission as Michigan Gas Transmission Corporation FPC No. 1 and Supplements.

\*\*\* "Exhibit A," here referred to, is the same contract as that contract of which a copy, marked "Exhibit I," is attached to and made a part of the Stipulation of Facts in Cause No. 16741 before the Public Service Commission of Indiana.

\*\*\*\* See Panhandle Eastern Pipe Line Company Rate Schedule FPC No. 57, filed March 2, 1942 and effective April 1, 1942, and Panhandle Eastern Pipe Line Company Rate Schedule FPC No. 55, filed October 23, 1941 and effective January 2, 1942.



or about *August 1, 1942*, subject to such changes as may result from orders of the Commission in the pending rate proceedings against Panhandle, and grant such further relief as the Commission may deem proper.

(Duly signed and verified under oath.)

### Exhibit "L"

Notice by Panhandle Eastern Pipe Line Company of cancellation or termination of certain rate schedules.

Federal Power Commission  
Washington, D. C.

Gentlemen:

Notice is hereby given that the following identified rate schedules filed with the Federal Power Commission by Michigan Gas Transmission Corporation (now Panhandle Eastern Pipe Line Company) are proposed to be cancelled on the dates respectively set forth opposite the description of each of said schedules:

[fol. 463]

PEPL Co. Rate Schedule FPC Number	Name of Ultimate Industrial Customer	Date of Contract	Date of Proposed Termination
73	Guide Lamp Division of Gen. Motors Corp.	9/12/40	7/19/43
72	Sterling Glass Co.	7/ 8/40	8/ 3/43
Supp. 15 to 71	Slick Glass Co.	2/16/40	7/19/43
74	Owens-Illinois Glass Co.	5/27/41	7/19/43
Supp. 17 to 71	Foster Forbes Glass Co.	10/31/40	8/ 3/43
Supp. 6 to 71	Aladdin Industries	10/ 5/38	7/19/43
Supp. 7 to 71	Sneath Glass Co.	10/ 5/38	7/19/43
Supp. 14 to 71	Hart Glass Div. of Armstrong Cork Co.	11/13/39	7/19/43
Supp. 5 to 71	Indiana Glass Co.	9/27/38	7/19/43
Supp. 13 to 71	Ball Brothers	11/ 1/39	7/19/43
Supp. 16 to 71	Banner Rock Div. of Johns-Manville Corp.	8/20/40	7/19/43
Supp. 11 to 71	General Insulating Co.	10/20/38	7/19/43
29	Banner Rock Div. of Johns-Manville Corp.	5/ 5/41	7/19/43
28	Eaton Canning Co.	5/ 5/41	7/19/43

The aforementioned Michigan Gas Transmission Corporation rate schedules numbers 28 and 29 are so designated for the reason that Panhandle Eastern Pipe Line Company has not been advised that new Panhandle Eastern Pipe [fol. 464] Line Company schedule numbers have been assigned thereto.

The above notice was served on Central Indiana Gas Company by depositing a copy thereof in the United States mail, addressed to Central Indiana Gas Company at Muncie, Indiana, on the eighteenth day of May, 1943.

No negotiations are presently in progress for a continuance of the service to the customers covered by the said rate schedules, however, it is the intention of Panhandle Eastern Pipe Line Company to negotiate with said several industrial customers for a continuation of the service directly by Panhandle Eastern Pipe Line Company. Also, it is the intention of Panhandle Eastern Pipe Line Company to negotiate with Central Indiana Gas Company for the purpose of effecting necessary arrangements for the delivery of gas by Central Indiana Gas Company to each of said customers for the account of Panhandle Eastern Pipe Line Company.

Panhandle Eastern Pipe Line Company is not advised whether Central Indiana Gas Company approves or disapproves of the cancellation and termination of said several rate schedules.

Yours very truly, Panhandle Eastern Pipe Line Company by C. Buddrus, President.

Dated this 18th day of May, 1943, at Kansas City, Missouri.

[fol. 465]

Exhibit "M"

Letter of Central Indiana Gas Company to Federal Power Commission dated August 9, 1943.

August 9, 1943.

Federal Power Commission,  
Washington, D. C.

Re: Panhandle Eastern Pipeline Company

GENTLEMEN:

This is in reply to your letter of May 29, 1943 requesting information on the effect of the notice of cancellation or termination dated May 18, 1943 by Panhandle Eastern Pipeline Company filed with the Federal Power Commission, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers.

According to our information, this notice of cancellation extends to all filed rate schedules of Panhandle Eastern Pipeline Company for service to Central Indiana Gas Company, except the original supply contract between Panhandle Eastern Pipeline Company and Central Indiana Gas Company (or their respective predecessors), dated May 13, 1931, and an amendment dated October 20, 1931.

This proposed cancellation involves natural gas service to fourteen large industrial consumers whose annual consumption of natural gas now exceeds six billion cubic feet, and whose operations are almost exclusively in production of materials for war needs. Substantially all of [fol. 466] these industrial consumers have no equipment, except possibly temporary emergency equipment, for the utilization of any fuel other than natural gas for these essential operations, and all or substantially all of these industrial consumers have been receiving from and relying on this sole source of natural gas since its original establishment in this area in 1931.

All of these industrial consumers except one are located in municipalities in which Central Indiana Gas Company renders public utility gas service, and all of these industrial consumers are served directly from the distribution facilities of Central Indiana Gas Company. Panhandle Eastern Pipeline Company does not have any facilities which connect with any of these industrial consumers and consequently, as indicated by Panhandle in the notice of cancellation, service to these consumers must be through and by means of the facilities of Central Indiana Gas Company. Attached hereto is a map which shows the areas served by Central Indiana Gas Company, the approximate location of these industrial consumers, the approximate location of the transmission lines of Panhandle Eastern Pipeline Company in this area, and the approximate distance between the location of such transmission facilities and of such consumers.

We requested extensions of time within which to file this information from June 10th to about August 16th, 1943, so that we could ascertain exactly what Panhandle Eastern Pipeline Company proposed to do before replying.

It is the declared policy and intention of Panhandle Eastern Pipeline Company to abandon service to Central



Indiana Gas Company for resale to these industrial consumers, and to try to take over and serve directly these industrial consumers so that the rates to be charged there- [fol. 467] for will be beyond the regulatory control of the Federal Power Commission. Since it is patently impossible, as shown by the attached map, for Panhandle Eastern Pipeline Company now to serve these industrial consumers except by means of the facilities of Central Indiana Gas Company and since, as stated by Panhandle Eastern Pipeline Company in its notice of cancellation, it intends to continue service for these industrial consumers, we do not see that there is any alternative for Central Indiana Gas Company but to disapprove and oppose vigorously the proposed cancellation. It is clear that the present and future public convenience and necessity will not permit such proposed abandonment. Further, it is noteworthy that the underlying purpose of such proposed abandonment is to try to effect a technical or paper rearrangement of this sale to Central Indiana Gas Company for resale to industrial consumers, so that it will have the appearance of a direct sale and hence be at rates not subject to the jurisdiction of the Federal Power Commission.

With respect to Central Indiana Gas Company: It is an Indiana corporation whose post office address is 300 East Main Street, Muncie, Indiana; it is a public utility engaged in the distribution to the public at retail only of gas, serving the municipalities of Muncie, Marion, Anderson and 19 additional communities involving a population of 166,000 and about 31,500 customers all located within the State of Indiana; it is subject to the jurisdiction of the Public Service Commission of the State of Indiana as to rates, accounting, issuance of securities, etc.; and it has been rendering such service continuously since 1888, serving all consumers in its area of service.

[fol. 468] Since this reply is in the nature of a protest, the facts herein stated are verified under oath, and this letter is filed in quintuplicate.

Very truly yours,  
Central Indiana Gas Company  
By: Guy T. Henry /s/  
President

(Duly verified under oath, August 9, 1943.)

[fol. 468]

No.	Name of Industrial Consumer	Location	Approximate Distance from Panhandle Transmission Facilities
1	Guide Lamp Division of General Motors Corporation	Anderson	5 Miles
2	Sterling Glass Company	Lapel	3½ "
3	Slick Glass Company	Gas City	5½ "
4 A	Owens-Illinois Glass Company	Gas City	5½ "
4 B	Owens-Illinois Glass Company	Muncie	1½ "
5	Foster Forbes Glass Company	Marion	12 "
6	Aladdin Industries	Alexandria	6 "
7	Sneath Glass Company	Hartford City	9 "
8	Hart Glass Division of Armstrong Cork Company	Dunkirk	17 "
9	Indiana Glass Company	Dunkirk	17 "
10	Ball Brothers	Muncie	1½ "
11	Banner Rock Division of Johns-Manville Corporation	Alexandria	6 "
12	General Insulating Company	Alexandria	6 "
13	Banner Rock Division of Johns-Manville Corporation	Alexandria	6 "
14	Eaton Canning Company	Eaton	11½ "

(Here follows, Exhibit M, folio 468)

See Card 9 for Exhibit M,  
(Page 350A)

[fol. 469]

## Exhibit "M-1"

Letter of Panhandle Eastern Pipe Line Company to  
Federal Power Commission, dated September 1, 1943.

September 1, 1943.

Federal Power Commission  
Washington, D. C.

Attention: Leon M. Fuquay, Secretary  
Re: Docket No. G-495

DEAR SIRs:

This letter is with reference to the letter of Central Indiana Gas Company to you, dated August 9, 1943, protesting our notice of cancellation, dated May 18, 1943, of contracts with Central Indiana Gas Company for its gas requirements for resale to fourteen of its industrial customers.

We have not concluded negotiations with certain other war industries, not presently served by us, which would require volumes of gas equal to those volumes required by Central Indiana Gas Company to serve said fourteen industrial customers. Moreover, because of the shortage and conservation of critical materials, we are unable at this time to obtain the necessary facilities to render direct service to any of the industries named in our notice of cancellation.

Without altering our policy to any extent whatsoever with respect to this matter, but for the reasons above stated, we hereby withdraw said notice of cancellation, dated May 18, 1943, as amended and extended by our letters to Federal Power Commission, dated June 14, [fol. 470] 1943 and July 23, 1943, without prejudice to our right of again filing a similar notice of cancellation, which we intend to do, at such time as it may appear to us to be desirable.

Very truly yours, ———, President.

cc: Central Indiana Gas Company.



## Exhibit "M-2"

Letter of Central Indiana Gas Company to Federal  
Power Commission dated October 22, 1943

October 22, 1943.

Federal Power Commission,  
Washington, D. C.

Attention: Office of the Secretary

DEAR SIRs:

We have received, presumably from Panhandle Eastern Pipeline Company, an unsigned copy of letter dated September 1, 1943 addressed to the Federal Power Commission and referring to *Docket No. G-495*.

That letter withdraws the notice of cancellation by Panhandle Eastern Pipeline Company to the Federal Power Commission, dated May 18, 1943; as amended and extended, relating to certain rate schedules therein described for natural gas service to Central Indiana Gas Company for resale to industrial consumers. Since our letter to you dated [fol. 471] August 9, 1943 disapproving and opposing the proposed cancellation was in the nature of a protest responsive to the notice of cancellation, we should like to advise that in view of the withdrawal of that notice of cancellation, the Commission may consider that the purpose of our protest has been effectuated. Accordingly, we are pleased to have the Commission consider our protest as withdrawn. Since there appears a statement in the letter of withdrawal by Panhandle Eastern Pipeline Company that they intend at some future time to file again a similar notice of cancellation, our withdrawal is necessarily without prejudice to our rights of filing again a protest or taking any other action which may be necessary or desirable to assure compliance by Panhandle Eastern Pipeline Company with the requirements of the Natural Gas Act.

Very truly yours, Central Indiana Gas Company, by:

Guy T. Henry /s/, President.

[fol. 472]

## Exhibit "N"

Letter of Central Indiana Gas Company to Secretary of  
Federal Power Commission dated May 13, 1944.

May 13, 1944.

Office of the Secretary,  
Federal Power Commission,  
Washington, D. C.

GENTLEMEN:

Re: Central Indiana Gas Company vs.  
Panhandle Eastern Pipe Line Company and  
Michigan Gas Transmission Corporation  
Docket No. G-405

We hereby withdraw, without prejudice, our petition  
filed in this docket on or about August 5, 1942.

For the record, we affirm the allegations in the petition.  
The issue presented is whether a natural gas company,  
assuming it has both the gas and the facilities to deliver  
it, should be permitted under the provisions of the Natural  
Gas Act, and particularly Section 7(b), to abandon part  
of such service to a public utility distribution company  
served by such natural gas company, for the purpose of  
undertaking such sales directly in a transaction not regu-  
lated by the Act. Such abandonment may involve the  
attempted cancellation of a contract or rate schedule re-  
lating to service to a public utility distribution company  
for resale to a specific industrial consumer and the dis-  
continuance of such service, or a refusal to agree to sell  
and to sell gas to a public utility distribution company for  
resale to an industrial consumer not then receiving such  
[fol. 473] service. Each case is a refusal to serve all  
the requirements of a public utility distribution company  
receiving service from such natural gas company, notwith-  
standing the fact that the natural gas company has both  
the gas and the facilities to render such service and there  
is no dispute as to the rate which would be applicable to  
such service.

For example, such refusal of service to a public  
utility distribution company for resale to an industrial con-  
sumer for interruptible use is permitted by the provisions

of the rate schedules of Panhandle Eastern Pipe Line Company on file with Federal Power Commission designated as Rd-1 and Rd-2. (We refer to those schedules because they contain the rates sought in our petition, and because Panhandle Eastern Pipe Line Company in its answer suggests that we avail ourselves of service under these schedules.) Those provisions read:

"With respect to each customer whose gas requirements the Utility desires to purchase hereunder, the Utility shall furnish the Company the name and location of the customer; a description of the purpose or purposes for which such gas is to be utilized; the business in which the customer is engaged, and estimates of monthly and maximum daily gas requirements.

"If the Company indicates to the Utility, in writing, its willingness to supply the utility with gas for resale to such customer under this rate schedule, then the Company thereafter shall sell and deliver gas hereunder to the Utility for resale to such proposed customer."

Although the natural gas company has, under these provisions, the unlimited discretion to refuse such service in [fol. 474] any and all cases, the provision in the schedule on availability states that it is available only to a utility which purchases its firm gas requirements from the natural gas company, and the schedule (Gd-1) covering such firm requirements provides that it is available only to a utility which agrees to purchase from the natural gas company natural gas "for all of its gas requirements" etc. Therefore, under the terms of the filed rate schedules, the utility obligates itself to purchase all of its requirements from the natural gas company but the natural gas company reserves to itself the unrestricted right to determine whether it will undertake service for resale for interruptible use.

Very truly yours,  
Central Indiana Gas Company  
Guy T. Henry /s/  
President



**Exhibits Referred to in Stipulation of Fact and Admitted  
in Evidence at the Hearing Before the Michigan Public  
Service Commission**

**EXHIBIT 1**

Map showing gas fields and transmission system of  
Panhandle Eastern Pipe Line Company (attached to  
Stipulation of Facts). File D3335.

(Here follows 1 map Exhibit 1, folio 474a)

See Card 9 for Exhibit 1,  
(Page 356A)

[fol. 475]

## EXHIBIT 2-a

Gas contract between Panhandle Eastern Pipe Line Company and Detroit City Gas Company dated August 31, 1935.

Agreement made and entered into this 31st day of August, 1935, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter caller Seller), party of the first part, and Detroit City Gas Company, a corporation of the State of Michigan (hereinafter called Buyer), party of the second part.

Buyer represents that it owns and operates a gas distribution system in and adjacent to the City of Detroit, Michigan through which it is engaged in the distribution of gas to the public, and that it desires to obtain a supply of natural gas.

Seller represents that it owns, directly or through subsidiaries, natural gas production facilities and gas purchase contracts in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production area to a point on the Illinois-Indiana state line; that subject to the provisions hereof, it will be able to have available at said eastern terminus of its pipe line at the Illinois-Indiana state line, sufficient quantities of natural gas to fulfill the requirements of this Agreement; and that, likewise subject, it contemplates constructing or arranging for the construction of a pipe line to connect the eastern terminus of its pipe line with Buyer's distribution system at or near the City of Detroit.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

[fol. 476]

## ARTICLE I.

## DEFINITIONS

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The "Effective Date" of this Agreement shall mean the first day of the calendar month immediately following the date when Buyer shall notify Seller in writing of the



completion of the necessary adjustments to all of its customers appliances.

2. The "Date of Initial Delivery" shall mean the date on which Seller shall notify Buyer of the completion of a connecting pipe line from the eastern terminus of its existing pipe line at the Illinois-Indiana state line to the Buyer's River Rouge plant, and is ready to begin delivery of gas under this contract, which Seller agrees shall not be earlier than July 1, 1936, nor later than September 1, 1936.

3. The term "day", wherever used in this Agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the place of delivery.

4. The term "month", wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the place of delivery, on the first day of a calendar month and ending at seven o'clock A. M. Standard Time or Daylight Saving Time, whichever shall be in effect at the said place of delivery on the first day of the next succeeding calendar month.

[fol. 477] 5. The term "Special Industrial Customer" shall mean an industrial customer for the gas supply for whom Seller and Buyer make specific agreement outside of that provided for in Article VII, Section 2 hereof.

## ARTICLE II.

### Scope of Agreement

1. Commencing with the Date of Initial Delivery Buyer will proceed with due diligence to make necessary adjustments of all of its customers appliances and will complete them within six months. Buyer will notify Seller in writing when the adjustment of all of its customers appliances is completed.

2. Commencing with the Effective Date of this Agreement, and for the period provided in Article III hereof, Seller agrees to sell and deliver to Buyer, and Buyer agrees to buy from Seller, all of the natural gas requirements of Buyer for distribution and sale to any and all of its present and future customers and for its own use, but not in excess of ninety million cubic feet or its equivalent,

nine hundred and twelve thousand six hundred therms, per day which represents all of the gas Seller now believes it can safely contract to furnish Buyer at this time.

3. In consideration of the covenant in the last preceding paragraph, Seller agrees that if at any time in the future, while this Agreement remains in force, Seller, its assignee, or any successor corporation carrying out the terms of this Agreement, has additional gas which it desires to distribute in the territory served by Buyer, Buyer shall for the balance of the period during which this Agreement shall remain in force, have the right to purchase such gas in such amount as it is willing to take under a firm commitment and at such price and under such terms and conditions as Seller could otherwise obtain for such gas.

The Seller further agrees that if, during the period that this Agreement shall remain in force, it should sell and deliver natural gas at a price less than that charged Buyer under this Agreement to another or others than Buyer for use or resale within the territory now served by Buyer with gas purchased hereunder, it will simultaneously reduce the contract price to Buyer hereunder to the lowest price obtained by it for gas sold to such party or parties. If conditions of sale be different, the amounts being substantial, Seller shall grant Buyer the right to change this Agreement to conform to such conditions in order to obtain such lower price.

4. Seller shall not be required to supply hereunder more than 90 million cubic feet or its equivalent nine hundred and twelve thousand six hundred therms of natural gas in any one day. Buyer agrees to take and pay for not less than the following annual amounts of natural gas, commencing with the Effective Date hereof:

First Year	81,120,000 therms
Second Year	101,400,000 therms
Third Year	121,680,000 therms
Fourth Year	141,960,000 therms
Fifth year and each year thereafter	152,100,000 therms

Buyer agrees that it will not take on its maximum day more than twice the number of therms which it takes on the average day of the twelve month period to which said maximum day applies in the computation of demand charge.

The term "maximum day" is understood to be that day during either December, January, February or March of the said twelve months period upon which the greatest number of therms has been taken.

[fol. 479] 5. In the event that Buyer shall have a prospective Special Industrial Customer and shall desire to purchase natural gas to serve such customers, the parties hereto will endeavor to negotiate a separate contract to cover the price at which Seller will furnish such gas to Buyer. Each such separate contract shall depend upon Seller's having available a sufficient supply of natural gas and shall include a provision for temporary curtailment or discontinuance of service thereunder in the event of an insufficiency of Seller's supply for other deliveries under this Agreement.

It is agreed that if Seller shall refuse to furnish Buyer up to 20,800,000 therms of gas per year to serve such Special Industrial Customers at a price not less than the commodity charge specified in Article VII, Section 2, then Buyer's obligation to take the minimum quantities specified in the next preceding Section of this Agreement shall be reduced by such quantities as Seller shall fail to supply Buyer for such industrial customers, but not to exceed 20,800,000 therms per year.

6. Except as otherwise provided in Section 5 of this Article II, all gas sold by Seller to Buyer shall be governed by all the provisions of this Agreement.

7. Inasmuch as the carrying out of this Agreement depends upon the construction of a pipe line connecting the eastern terminus of Seller's existing pipe line at the Illinois-Indiana state line with the city of Detroit, as well as on the reinforcement of the present pipe line of Seller, since the present line of Seller is inadequate to deliver the quantity of gas called for by this Agreement without reinforcements requiring the expenditure of a large sum of money, and Seller represents that its financial position is such that it cannot construct either said connecting line or said reinforcements without outside financing, it is expressly understood and agreed that unless the construction of such connecting line shall have been financed on or before February 1, 1936, and unless a contract shall be entered into providing for the financing of said reinforcement of Seller's present pipe line before said date, this Agreement



shall be null and void and no obligations hereunder shall exist on the part of either party hereto. Seller agrees to use its best efforts to arrange for financing the construction of such connecting pipe line and such reinforcement of its present pipe line, but does not undertake any firm commitment to do so. If such financing shall be arranged by said date, Seller will construct and place said connecting pipe line in condition for operation on or before the Date of Initial Delivery.

Recognizing the desire of Buyer to obtain a supply of natural gas at the earliest possible moment, as well as the importance thereof to Buyer, Seller agrees that as soon as it becomes apparent to it that it will be unable to finance the construction of the connecting pipe line or construct the same, or that a contract cannot be made for financing the reinforcement of Seller's pipe line, whereby this Agreement would become null and void, it will give to Buyer written notice of such facts and a release of Buyer from any liability hereunder leaving Buyer then free to obtain or contract for supply elsewhere.

8. In the event that an adequate supply of natural gas sufficient to meet all of Buyer's requirements for the unexpired term of this Agreement is developed by responsible parties other than Seller and is made available to Buyer in its served territory by the actual construction of a pipe line thereto, or in the event that such a supply is similarly made available to a competitor serving and distributing gas [fol. 481] in such territory at a schedule of rates which applied to the deliveries of gas to Buyer hereunder during the preceding twelve months would result in a lower amount than under the rates provided for by this Agreement, then and in that event Buyer may give notice to Seller of such available gas and with such notice shall furnish to Seller the rate schedules aforesaid, together with other data and particulars pertinent under this Article, and Seller shall have six months after date of receipt of such notice and rate schedules, data and particulars, within which to meet such lower obtainable price of gas, and in the event of the failure of Seller to agree to modify this Agreement accordingly within said six months period Buyer shall have the option to terminate this Agreement at any time within twelve months after expiration of said six months period upon six months written notice to Seller.

## Article III

## Term of Agreement

The term of this Agreement shall be for a period of fifteen (15) years beginning with the Effective Date and from year to year thereafter, after the expiration of said fifteen (15) year period, until cancelled on eighteen (18) months' notice in writing given by either party to the other.

## Article IV

## Quality

1. Seller agrees that the gas delivered hereunder shall be natural gas (a) except that said natural gas shall at all times comply with the requirements as to purity expressed in this Agreement; (b) that Seller may extract or permit [fol. 482] the extraction of moisture, helium, natural gasoline, butane, propane, and/or other hydrocarbons (excepting methane) from said natural gas, or may enrich said natural gas to the extent required to meet the gross heating value requirements hereof before delivery thereof to Buyer; and (c) that Seller may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be required in its transmission from the wells to the point or points of delivery.

The gas delivered hereunder is assumed but not guaranteed to have a gross heating value of 1014 British thermal units per cubic foot. In no event shall the gross heating value of the gas delivered hereunder fall below 950 British thermal units per cubic foot nor exceed 1100 British thermal units per cubic foot, and the variation in gross heating value shall not be more than 100 British thermal units per cubic foot in any six months period.

2. Seller agrees that the gas delivered hereunder

(a) shall be commercially free from solid and/or liquid matter, dust, gums and/or gum forming constituents;

(b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet and that this purity requirement shall be determined by quantitative test after presence of  $H_2S$  has been indicated by qualitative test which shall consist of ex-

posing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging from a [fol. 483] jet upon the test paper, and after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas;

(c) shall not contain more than twenty (20) grains of total sulphur per hundred (100) cubic feet;

(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas in the main pipe line at a point approximately fifty (50) feet in advance of Seller's meter inlet header, and that the water shall not be present in liquid phase;

provided, that if Buyer or any purchaser from Buyer shall at any time be required by a duly constituted public regulatory authority to deliver to its customers gas containing less hydrogen sulphide and/or less total sulphur than above specified, Seller shall upon reasonable notice from Buyer cause the gas delivered hereunder to conform to such new requirement at Seller's expense.

3. Seller agrees that if the gas offered for delivery by it hereunder shall fail at any time to conform to any of the specifications hereinabove set forth, then Buyer may at its option refuse to accept delivery of or accept delivery of such gas and itself make changes necessary to bring such gas into conformity with such specifications, and Seller shall reimburse Buyer for any reasonable expense incurred by Buyer in effecting such changes, or for any reasonable expense otherwise incurred by Buyer by reason of the failure of the gas to conform to such specifications.

[fol. 484]

## Article V

### Measurements

1. The sales unit of the gas deliverable under this Agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.



2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the gross heating value of such gas in British thermal units per cubic foot, and by dividing the product by one hundred thousand (100,000).

3. Measurements of volume and heat value of gas hereunder shall be at the following points:

#### Volume

(1) The volume of gas delivered by Seller hereunder shall be measured at the meter or meters of Seller, which, together with building and with all other collateral equipment required for the final determination of volume, Seller agrees to install and maintain and which will be operated by Seller at the Place of Delivery.

#### Heat Value

(2) The heat value of gas delivered by Seller hereunder shall be determined by a calorimeter or calorimeters of Seller which Seller agrees to install and maintain and which shall be operated by Seller at the Place of Delivery.

Provided, however, that Buyer shall install and operate, at its own expense, meters to determine the volume of gas [fol. 485] delivered each day to each of Buyer's Special Industrial Customers, the measurements to be corrected to the measurement basis specified in Section 4(a) of this Article V.

4. The measurement of volume and heat value of gas hereunder shall be made in the following manner:

#### Volume

(a) The unit of volume for the purpose of measurement and for the determination of gross heating value shall be one (1) cubic foot of gas saturated with moisture at thirty (30) inches of mercury pressure and at sixty (60) degrees Fahrenheit temperature.

(b) The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four

tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Place of Delivery above sea level or variations in such barometric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(d) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular [fol. 486] test at the first of the month shall determine the specific gravity to be used in computations for the measurement of gas deliveries until the end of such month or until changed by subsequent test; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

(e) The relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of delivery of gas to Buyer and at such times thereafter as may be agreed upon by both parties.

#### Heat Value

The gross heating value of the gas per cubic foot, as defined in Section 4 (a) above, shall be determined by taking the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked once each day, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the U. S. Bureau of Standards and operated in accordance with methods recommended by the said Bureau. If upon any test any calorimeter shall be found to be not more than 2% in error, previous readings of such calorimeter

shall be considered correct in computing the heat value of gas delivered by Seller to Buyer. If upon any test any calorimeter shall be found to be in error by more than 2%, then any previous readings of such calorimeter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in [fol. 487] case the period is not definitely known or agreed upon, such correction shall be for a period extending over one-half the time elapsed since the date of last calibration, not exceeding a correction period of four (4) days.

## Article VI

### Metering Equipment

1. Buyer shall provide in all contracts with Special Industrial Customers that Seller shall have the right at all times during business hours to inspect the measuring and recording equipment of Buyer pertaining to sales to such Special Industrial Customers.

2. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts together with calculations therefrom for the other party's inspection and verification, subject to return within ten days after receipt thereof.

3. The total capacity of the gas measuring equipment installed by Seller shall be sufficient to permit the testing and withdrawal of any individual meter from service without restricting the delivery of gas or interrupting the measurement of gas. The installation, maintenance and operation of regulating equipment shall be such as not to affect [fol. 488] the accuracy of the gas volume determination made from Seller's meters. The meter or meters of Seller shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from



any cause in so far as such protection is obtainable within practicable limits mutually agreed upon to embody the best knowledge and information available.

4. Either party shall have the right to examine and approve, or object to, the plans of the other for the installation by it of such measuring equipment, and none of said installations shall be placed in service for the measurement of gas hereunder unless and until both parties are satisfied, or it shall be determined by arbitration, that such installation has been made in such manner as to permit of accurate determination of the quantity of gas to be delivered hereunder and to permit ready verification of the accuracy of measurement.

5. Seller agrees to provide without expense to Buyer check measuring equipment together with a suitable site for the location of said check measuring equipment which shall be operated by Buyer. Any property of Buyer which may be placed thereon shall be and remain Buyer's property. Such check meters and equipment shall be so installed as not to interfere with the operation of meters of Seller. Seller shall have access to such check measuring equipment at all reasonable hours but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of Buyer. Seller shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or adjusting done in connection with such check measuring equipment or with Buyer's meters measuring gas to Special Industrial Customers. Charts and records from said check [fol. 489] measuring equipment, together with calculations therefrom, shall be available to Seller for inspection and verification, subject to return by Seller within ten (10) days after receipt thereof.

6. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

- (a) By using the registration of any check meter or meters if installed and accurately registering;
- (b) By correcting the error if the percentage of error

is ascertainable by calibration, test or mathematical calculation; or

(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of Seller's measuring equipment shall be verified, at Seller's expense, in the presence of representatives of both Seller and Buyer, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If either party at any time shall notify the other that it desires a special test of any meter, the parties shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of [fol. 490] the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representatives present.

8. If upon any test any meter is found to be not more than two per cent. (2%) fast or slow, previous readings of such meters shall be considered correct in computing the volume of gas delivered by Seller to Buyer; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate by an amount exceeding two per cent. (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days.

9. The meters of Seller shall be read at seven o'clock Standard Time (or Daylight Saving Time whichever shall be in effect), in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

10. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

## Article VII

### Rate and Computation of Bills

1. All gas purchased by Buyer from Seller for resale to Special Industrial Customers shall be paid for at the respective prices agreed upon between Buyer and Seller for such gas.

[fol. 491] 2. For all gas purchased by Buyer from Seller hereunder, other than gas purchased for resale to Special Industrial Customers, subject to the provisions of Sections 3, 4 and 5 of this Article VII, the price shall be as follows:

#### Demand Charge:

For each month, a sum equal to thirty-eight cents (38c) multiplied by the maximum daily demand, as hereinafter defined. The term "maximum daily demand" shall mean the greatest number of therms delivered on any one day during the immediately preceding winter period, consisting of the months of December, January, February and March, after deducting the sum of the demands of the Special Industrial Customers provided for herein on said day, except that the demand for each month prior to the expiration of the first winter period shall be billed on the actual maximum daily demand established during the said month.

#### Commodity Charge:

In addition to the demand charge, the sum of one and one-half cents ( $1\frac{1}{2}c$ ) per therm for the total number of therms delivered by Seller to Buyer hereunder during such month.

If the total quantity of therms taken in any one year is less than the minimum requirement provided in Section 4 of Article II, then for the therms representing such deficiency Buyer shall pay at the same average rate per therm as it has paid for such gas as it has actually taken in said year.

3. For all gas delivered between the Date of Initial Delivery and the Effective Date, the price shall be at a flat rate of three cents (3c) per therm.



[fol. 492] 4. If, at the end of any calendar year during the term of this Agreement, it shall be found that by reason of any legislation enacted by the Federal Government, or regulations or orders of any of its governmental agencies, or, as hereinafter limited and defined, by reason of any state or local legislation, or regulations or orders of state or local governmental agencies, there has been a direct increase or decrease in the operating costs of Seller's transmission line, applicable and incidental to the gas delivered to Buyer hereunder, in respect only to the rates of wages, hours of labor, prices of materials and supplies and rates of taxation, as a result of which (computed as hereinafter set out) such operating costs have for such year just passed increased or diminished 20% or more from the costs experienced by Seller during the first twelve calendar months of operation after the Effective Date of this Agreement, then and in such event one-half of one-twelfth of the amount of such increase or decrease shall be added to or deducted from the charge for gas as provided in paragraph 2 of Article VII for each month of the ensuing year.

In computing the amount of any such increase or decrease, applicable to the gas sold to Buyer, the increases or decreases due to national legislation, regulations or orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted by the Seller in its pipe line; and due to State of Michigan and local legislation, regulations or orders shall be that proportion of the total amount which the gas sold to Buyer hereunder (other than to Special Industrial Customers) bears to the total gas transmitted and sold by Seller in said State and locality respectively.

[fol. 493] In the event of the imposition of a production tax or other similar tax in Texas or Kansas or either of them, the increase or decrease due thereto shall be determined by first ascertaining the quantity of gas produced and/or purchased by Seller in such State and delivered to said pipe line and upon which such tax has been paid. Buyer shall be deemed to have received of such gas the same proportion thereof that the gas purchased by Buyer bears to the total gas transmitted by Seller in its pipe line. In general the applicable increase or decrease due to such State's legislation, regulations or orders shall be that pro-

portion of the increased cost which the quantity of gas sold to Buyer bears to the total quantity transmitted beyond the boundary line of such State.

Adjustments shall be made thereafter annually, at the close of each calendar year and in the same manner, but if at the end of any calendar year it be found that the increase or decrease for such calendar year, based upon the costs during the first twelve calendar months period of operation, and computed as herein provided, be less than 20%, then the charge for gas set forth in Section 2 of Article VII shall remain in force for the next succeeding calendar year.

In computing increase or decrease in taxation there shall not be considered changes in income taxes, excess profits taxes, capital stock taxes, franchise taxes or general property taxes, or such taxes as by plain provision or intent of the law are to be paid by the party taxed and not passed on to the consumer. Neither shall there be considered any increase or decrease in costs or regulation by any state or national commissions engaged purely in the regulation of utilities or carriers.

As soon as possible after the close of each calendar year Seller shall furnish Buyer with a computation showing the [fol. 494] increase or decrease in such operating costs, and such amount as it claims the charges for gas should be increased or decreased for the ensuing year. For the purpose of determining the accuracy of such computation and the facts upon which it is based, Buyer shall have the right at any reasonable time or times, by its duly authorized agents or accountants, but no more than once a year, to audit the pertinent records and books of account of Seller, and of any successor carrying out this agreement.

5. As Seller's share in Buyer's cost of changing over its distribution system to adapt it to the distribution of natural gas or mixed gas, Seller will contribute to Buyer the sum of \$220,000, by way of twelve equal monthly credits against the monthly bills to be rendered by Seller to Buyer pursuant to Article VIII of this Agreement, and during the first year immediately following the Effective Date.

## Article VIII

### Billing

1. On or before the fifth day of each month, Buyer shall render to Seller a statement showing for the preceding calendar month the volume of natural gas shown by its meters to have been delivered by Buyer to each of its Special Industrial Customers.

2. Seller shall, on or before the tenth day of each calendar month, render to Buyer a statement showing the following:

(1) The total number of therms delivered by Seller to Buyer during the preceding calendar month; with complete computation showing procedure by which determined;

[fol. 495] (2) The number of therms delivered by Buyer to each of the Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statement;

(3) The total number of therms delivered by Seller to Buyer for other than Special Industrial Customers during the preceding calendar month, in accordance with its aforesaid statements (1) and (2);

(4) The maximum daily demand applicable to the period; and

(5) The payment then due from Buyer to Seller determined as provided in this Agreement and in any other Agreements between the parties relating to sales to Special Industrial Customers.

Such statements shall be accompanied by charts showing the basis on which the daily deliveries in therms were computed.

3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

## Article IX

### Payments

1. Buyer agrees to pay Seller at its designated office on or before the twentieth day of each calendar month for natural gas delivered during the preceding month, accord-



ing to the measurements, computations and prices herein provided and billed by Seller in the statement for said month, excepting that in the event that at any time Buyer shall dispute the correctness of any statement so rendered, [fol. 496] then payment shall be made by Buyer for such amounts as it concedes to be correct and such amount as may be in dispute shall be settled by agreement by mutual submission to arbitration, or by court action. Any payment by Buyer shall not prejudice its right to adjustment of any bill to which it has taken exception or may subsequently take exception within a reasonable time after discovery of its right to such adjustment, but in any event within twelve (12) months from date of bill.

2. Should Buyer fail to pay the amount of any bill for gas rendered by Seller as herein provided, when such amount is due, interest thereon shall accrue at the rate of 6% per annum from the due date until the date of payment. If such failure to pay continues for 60 days after payment is due, Seller may, in addition to any other remedy it may have hereunder, suspend further delivery of gas until such amount is paid, provided, however, that if the Buyer shall, in good faith, either dispute the amount of any such bills or parts thereof, or present a counter-claim or offset against the same, and shall at any time thereafter within thirty (30) days of a demand made by Seller, furnish a good and sufficient surety bond, in amount and with sureties to be approved by Seller, conditioned upon the payment of any amounts ultimately to be found due upon such bills after a final determination, which may be reached either by agreement, arbitration award or judgment of the courts as may be the case, then such bills shall not be deemed to be due within the meaning of this paragraph unless and until default be made in the conditions of such bond.

Except as Seller may question the ability of Buyer to respond in damages, it need not demand or require such bond and it may permit such disputed amounts to accumulate, but in the event Seller shall require Buyer to give bond [fol. 497] then Seller shall be obligated to institute appropriate legal action to determine such dispute within one year after the date of the bills in question, or unless by agreement of the parties the matter be submitted to arbitration within such period.

3. If presentation of bill by Seller is delayed after the tenth day of the month, then the time of payment shall be extended correspondingly, unless the delay in the presentation of the bill is occasioned by the delay on the part of Buyer in furnishing a statement of the amount of natural gas delivered to Special Industrial Customers.

4. If it shall be found at any time that Buyer has been overcharged in any form whatsoever under the provisions hereof, and Buyer shall have actually paid the bills containing such overcharges, Seller shall refund such amount or amounts of overcharges within thirty (30) days of the determination thereof, with interest thereon at the rate of six per cent. (6%) per annum from the times respectively when such overcharges were paid until the date of refund, provided, however, that claim therefor shall have been made within sixty (60) days from the date of discovery of any such overcharges, but in any event within twelve (12) months of bill.

## Article X

### Operations by Seller

1. Seller agrees that all construction of pipe lines shall be of adequate capacity for the delivery of gas to Buyer in accordance with the requirements of this Agreement, but not to exceed a maximum amount of 90,000,000 cubic feet of gas per day or its equivalent nine hundred and twelve thousand six hundred therms.

[fol. 498] 2. In addition to the sources of supply, contracts for the purchase of gas, and transmission facilities which Seller represents it now holds or has available through subsidiaries, Seller agrees at all times to hold or have available through subsidiaries, sufficient gas acreage and gas production facilities to meet the requirements of this Agreement and its other obligations for the sale of gas and to have sufficient gas available and/or to hold long term gas purchase contracts with responsible parties calling for the sale and delivery to it of gas in sufficient quantities for the aforesaid purposes and to own or have available through subsidiaries or contract rights a system of pipe lines which shall be of adequate size for the transmission of gas from the various sources of supply to the Place of Delivery hereunder.

3. It is further understood and agreed that Buyer is a public utility company operating in the metropolitan area

of Detroit, Michigan, and that, inasmuch as one of its most important obligations is to supply the City of Detroit and its environs with gas, Seller shall operate its pipe line, or cause the same to be operated, in such manner as to assure, as nearly as is reasonably possible, continuous supply of gas in the quantity and of the quality required by this Agreement.

## Article XI

### Buyer's Facilities

1. Buyer agrees to make such changes in its distribution system as may be necessary to enable it to distribute natural gas and agrees to proceed to make such changes in time to be prepared to receive deliveries of natural gas on the Effective Date.

[fol. 499] 2. Buyer agrees to give Seller notice at all times, as far in advance as operating conditions will permit, of the estimated daily, monthly and annual quantities of natural gas required hereunder and the anticipated peak hourly demands. Buyer shall use its best judgment and experience in arriving at such estimates, but shall not be bound by the quantities thereof.

3. Buyer agrees that it will, subject to temporary or permanent outage resulting from either unavoidable deterioration or casualty, maintain in operation the storage holders which it now has, and will operate the same each day so as to assist in leveling the peak demands for natural gas to be delivered by Seller hereunder, subject, however, to the right of Buyer to keep at all times in its holders a reserve of gas of sufficient quantity to insure safe and adequate service to its customers as determined by Buyer; and Buyer will as nearly as practicable, with such storage capacity, take natural gas in equal and uniform hourly volumes. Subject to the aforesaid use by Buyer of holder capacity, Seller agrees to deliver to Buyer natural gas in accordance with the hourly and daily demands of the markets of Buyer up to but not to exceed a maximum daily demand of 90,000,000 cubic feet, or its equivalent nine hundred and twelve thousand six hundred therms.

4. Inasmuch as interruptions in the delivery of gas hereunder may from time to time occur due to force majeure, as herein defined, or otherwise, and Buyer, serving the large population and industries within the metropolitan area of Detroit, being in duty bound to maintain its present



water gas generating plants in good operating condition to effect continuity of service during such periods of interrupted service on the part of Seller, and because, in order [fol. 500] to furnish gas of substantially the heat equivalent of natural gas it will be necessary for Buyer to make large expenditures on such generating equipment, Seller recognizes and agrees that notwithstanding the covenant that Buyer will purchase from Seller all its natural gas requirements, Buyer may use its present generating plants from time to time to manufacture gas substantially equivalent in heat units to natural gas, to assist in leveling those peak demands which would otherwise increase the cost of gas under this Agreement, provided, however, that Buyer shall pay for the minimum requirements specified in Section 4 of Article II; provided, further, that nothing in this Section contained shall limit Seller's obligation to furnish Buyer's requirements for gas as elsewhere herein provided.

## Article XII

### Place and Point of Delivery

The Place of Delivery for all gas to be delivered by Seller to Buyer hereunder shall be at Buyer's River Rouge plant, Greenfield and Allen Roads, in Melvindale, Michigan, except in the case of such Special Industrial Customers as shall be served directly from some other point on Seller's pipe line, as may be agreed on by the parties. The point of Delivery shall be the outlet side of Seller's meters at the Place of Delivery and before passing through Buyer's regulators.

## Article XIII

### Possession of Gas

1. As between the parties hereto, Seller shall be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer at the Point of [fol. 501] Delivery, after which Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the

property and/or equipment of the indemnifying party, the Point of Delivery of the gas as hereinbefore specified to be the point of division of responsibility between the parties.

#### Article XIV

##### Pressure

Seller agrees to furnish gas hereunder at such pressures as Buyer may require, up to but not exceeding 100 pounds to the square inch gauge pressure, at the Point of Delivery. Buyer agrees to install, operate and maintain at the Point of Delivery such regulating devices as may be necessary to regulate the pressure of the gas delivered hereunder. Seller agrees to use due care and diligence to furnish gas to Buyer at a uniform pressure.

#### Article XV

##### Force Majeure

1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted [fol. 502] in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of

the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

## Article XVI

### Warranty of Title to Gas

Seller agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon; which are applicable before the title to the gas passes to Buyer or which may be levied and assessed upon the sale thereof to Buyer. In the event any adverse claim [fol. 503] of any character whatsoever is asserted in respect of any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Seller's obligations with respect to such claim under this Section, or until Seller shall have furnished bond to Buyer, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim.

## Article XVII

### Patents

In case Buyer should wish to use gas purchased hereunder for reforming, Seller will undertake to secure for Buyer, without cost to Buyer, the right to use in the area now served by Buyer, necessary processes covered by patents which Seller can control.

## Article XVIII

### Remedies

#### 1. In the event that:

(a) Seller should be unable to, or fail, for a period longer than ninety (90) days to deliver gas of a standard and British thermal unit content as provided in



this Agreement or which would meet the approval of any governmental agency having jurisdiction over Buyer, Buyer may by written notice to Seller cancel and terminate this Agreement in five days, on condition that at least sixty (60) days before said notice be given, Buyer shall have notified Seller that the gas delivered, or sought to be delivered, is below standard or unacceptable to the regulatory body and that said condition has then pertained for a period of thirty (30) days.

[fol. 504] In the event that:

(b) Seller should, for a period of five (5) consecutive days, fail to deliver to Buyer any material portion of the gas which under this Agreement it is bound to deliver, or

(c) there should be a deficiency in deliveries, caused by the failure or inability of Seller to deliver the quantity of gas which Buyer desires and is entitled to demand under this Agreement on any day of each seven (7) day period over a period of six (6) consecutive seven (7) day periods, commencing with the day on which such deficiency first occurred,

Buyer may, within two (2) weeks of the last day of any such periods provided in (b) and (c), by written notice cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, on condition that Buyer shall have notified Seller in writing of each such daily deficiency or deficiencies within forty-eight (48) hours after the same shall have occurred.

If by reason of any of the causes enumerated in Section 1, Article XV, either party is effectively prevented or prohibited from further carrying out this Agreement, or if by reason of any order of court or governmental agency resisted by all reasonable legal means, Buyer is prevented from selling and distributing gas within the City of Detroit, then either party may by five (5) days written notice to the other party, cancel and terminate this Agreement, without liability of any kind from one to the other, excepting for such transactions and dealings as were had and completed prior to the effective date of such cancellation.

In the event that Buyer shall fail to pay any bill rendered it by Seller for gas delivered under this Agreement within

[fol. 505] sixty (60) days after the same became due, Seller may, in addition to all other remedies which it may have at law in addition to those provided herein, at any time thereafter, by written notice to Buyer, cancel and terminate this Agreement, to be effective six (6) months from the delivery of such notice, provided that this remedy shall not be available or effective in case of default in the payment of disputed bills as elsewhere provided herein.

2. Any cancellation of this Agreement pursuant to the provisions of this Article XVIII shall be without prejudice to the right of Seller to collect any amounts then due it for gas delivered prior to the effective date of the cancellation, subject to any proper counterclaims or set-offs of Buyer, and without waiver of any remedy to which the party not in default may be entitled for violation of this Agreement.

3. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of return and profits, or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Buyer nor Seller shall in anywise be deemed to have waived either by the expressed provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this Agreement be cancelled or terminated by reason of any of the causes enumerated in Section 1 of Article XV hereof, or by reason of any order of court or governmental agency prohibiting the Buyer from distributing natural gas within the City of Detroit which has been resisted by all reasonable legal means, there shall be no liability upon the part of either party to the other, excepting such liability as remains [fol. 506] unsettled between the parties arising from the sale of gas and such transactions as were had and completed between the parties prior to cancellation.

4. If Seller shall at any time fail to deliver gas in volumes and/or at such pressures as Buyer may require up to the limits otherwise herein provided, Seller shall, unless relieved by the terms of Article XV hereof, reimburse and indemnify Buyer for any expenses, loss or damage which it may sustain by reason of such failure, including the expense of putting into operation any gas manufacturing equipment, and/or obtaining manufactured gas or natural gas to remedy such deficiency.

## Article XIX

### Miscellaneous

1. There shall be no modification of the terms and provisions hereof except by the formal execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Seller may assign its rights and obligations hereunder to a corporation to be formed for the purpose of carrying out this Agreement. Either Seller or Buyer may assign the rights and obligations of this Agreement to a corporation which shall receive the assets of such assignor and obligate itself to carry out the provisions hereof binding on such assignor, in which event the assignor shall be released hereunder, but otherwise neither party shall assign this Agreement or any of its rights hereunder unless it shall first have obtained the consent thereto of the other party.

[fol. 507] 4. Any notice, request, demand, statement or bill provided for in this Agreement shall be in writing and shall be duly delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company,  
101 West 11th Street,  
Kansas City, Mo.

Buyer: Detroit City Gas Company,  
415 Clifford Street,  
Detroit, Michigan.

or at such other address as either party shall designate for the purpose.

5. This Agreement shall be binding on any company which shall succeed by purchase, merger or consolidation to the properties of the Seller or Buyer, as the case may be.

6. Buyer will adopt and use schedules and forms of rates which will in its judgment tend to stimulate sales of natural gas for domestic, industrial and commercial purposes and for house heating. Buyer will make every reasonable effort



to increase and build up the sales of natural gas throughout its gas distribution system and Seller will cooperate with Buyer in accomplishing this result. Buyer agrees to make such reasonable extensions to its distribution system as would be susceptible of earning a reasonable return on the investment..

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties.)

[fol. 508]

Exhibit 2-b

Supplemental gas contract between Panhandle Eastern Pipe Line Company and Detroit City Gas Company, dated June 2, 1936

Agreement made this 2nd day of June, 1936, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Seller), party of the first part, and Detroit City Gas Company, a corporation of the State of Michigan (hereinafter called Buyer), party of the second part.

Whereas, under date of August 31, 1935, the parties entered into a contract (hereinafter called the Gas Contract) whereby, among other things, Seller agreed to sell and deliver to Buyer and Buyer agreed to buy and take from Seller all of the natural gas requirements of Buyer for distribution and sale to any and all of its present and future customers and for its own use, within the limits therein specified;

Whereas Seller is making large investments in extensions, additions and reinforcements of its existing pipe line system in order to enable it to comply with and meet the requirements of the Gas Contract, and desires Buyer to create as rapidly as possible a market for natural gas larger than that which now exists;

Whereas Buyer now represents that, under the conditions hereinafter provided, it will be able to obtain within the

near future a substantial number of additional househeating customers and thereby increase its natural gas requirements under the Gas Contract, but that the obtaining of such househeating customers will involve it in considerable expense;

[fol. 509] Whereas Seller desires Buyer to increase its natural gas requirements under the Gas Contract through the acquisition of additional househeating customers;

Whereas Buyer contemplates maintaining and operating the storage holders and the water gas generating plants which it now has to assist in leveling peak demands for natural gas to be delivered by Seller, as set forth in Sections 3 and 4 of Article XI of the Gas Contract; and

Whereas, upon condition that Buyer shall sell and distribute gas having a heating value approximately equal to the heating value of the natural gas delivered by Seller to Buyer, the parties hereto have concluded to enter into this Supplemental Contract;

Now, therefore, in consideration of the mutual covenants and agreements of the parties as herein set forth, the parties hereto covenant and agree as follows:

## Article I

### Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meaning as follows:

1. The term "Househeating Customer" shall mean a customer of Buyer who uses no other kind of fuel than gas for his space heating purposes and who purchases gas from Buyer under Buyer's rate schedule applicable to such customers.

2. The term "Househeating Purposes" shall apply to that portion of the gas sold by Buyer to its Househeating Customers which shall be used by them for space heating purposes.

[fol. 510] 3. The term "Average Number of Househeating Customers" served during any calendar month shall mean one-half of the total number of Househeating Customers actually receiving househeating service on the last day of the calendar month preceding the calendar month in

question plus one-half of the total number of Househeating Customers actually receiving househeating service on the last day of the calendar month in question.

4. The term "Winter Period" shall mean a period consisting of the four consecutive months of December, January, February and March.

5. The term "Total Measured Deliveries" for any given day shall mean the total number of therms of natural gas delivered by Seller to Buyer on that day at the Point of Delivery specified in the Gas Contract, exclusive of gas sold by Seller to Buyer and resold to Special Industrial Customers.

6. The term "Degree Day Deficiency" for any day shall mean the number of degrees the mean outside temperature for that day is below 65° Fahrenheit. The term "Degree Day Deficiency" for any other period shall mean the sum of the Degree Day Deficiencies for that period. The outside temperature shall be the 24-hour mean of outside temperature reported by the United States Weather Bureau at Detroit, Michigan.

7. The term "Factor K" shall mean the number of therms of gas which the average Househeating Customer is deemed to take for Househeating Purposes per unit of Degree Day Deficiency and shall be fixed for the purposes of this contract at .31 until changed as hereinafter provided.

8. The term "Househeating Daily Delivery of Buyer" shall mean the number of therms of gas calculated to have [fol. 511] been sold by Buyer for Househeating Purposes on any given day during a month, determined by multiplying the Degree Day Deficiency for that day by the Factor K, and multiplying this product by the Average Number of Househeating Customers served during that month, determined as described in Section 3 of this Article I.

In order to limit the extent of the application of the special rate for Househeating Purposes herein provided for, it is agreed that the Average Number of Househeating Customers used as a factor for the purpose of the computations to be made under this Section shall not exceed 6,000 in connection with each of the months prior to May, 1937, 10,000 in connection with each of the months after April, 1937 and prior to May, 1938, 13,000 in connection with each of the months after April, 1938 and prior to May, 1939, 16,000 in connection with each of the months after April,



1939 and prior to May, 1940 and shall never exceed 20,000, even if the actual Average Number of Househeating Customers in any month is greater than 20,000.

9. The term "Base Load" for any given day shall mean (a) the total number of therms of gas (other than gas sold to Special Industrial Customers) sent out by Buyer on that day minus the Househeating Daily Delivery of Buyer for that day or (b) the Total Measured Deliveries for that day, whichever shall be less.

10. The term "Househeating Daily Delivery of Seller" shall mean the number of therms, if any, by which the Total Measured Deliveries for any given day exceed the Base Load for that day.

11. The term "Base Load Maximum Demand" shall mean the Base Load delivered on that day of the preceding [fol. 512] Winter Period on which the delivery of Base Load was a maximum.

12. Prior to the end of the first Winter Period following the "Effective Date" of the Gas Contract, the "Base Load Maximum Demand" shall mean the Base Load delivered on that day on which the delivery of Base Load was a maximum.

## Article II

### Billing Basis

1. From the "Effective Date," as defined in the Gas Contract, until the date of termination of this Supplemental Gas Contract, as hereinafter set forth, the Demand Charge for each month, in lieu of the Demand Charge set forth in Section 2 of Article VII of the Gas Contract, shall be an amount equal to 38¢ multiplied by the sum of (a) the established Base Load Maximum Demand, and (b) twice the average Househeating Daily Delivery of Seller for the current billing month. Monthly payments by Buyer to Seller shall be made on the basis of the modified Demand Charge hereinabove provided and the Commodity Charge as set forth in the Gas Contract; provided, however, that if for any twelve-months' period ending on March 31 in any year (or for a period of less than 12 months commencing on the Effective Date of the Gas Contract and ending on March 31, 1937), the total payments due to Seller for natural gas, other than that purchased for resale to Special Industrial Customers, calculated on the fore-

going basis shall exceed the total amount that would have been payable for such period if calculated pursuant to the provisions of the Gas Contract unaffected by this Supplement [fol. 513] mental Gas Contract, then Seller shall refund to Buyer an amount equal to such excess by credit against the monthly payment due in the succeeding month.

2. On or before June 1st of each year during the life of this Supplemental Gas Contract, a redetermination of the accuracy of Factor K shall be made by two engineers or representatives, one designated by each of the parties hereto. Such redetermination shall be made in the light of the data which Buyer shall procure as to the average number of therms of gas consumed by Househeating Customers per unit of Degree Day Deficiency in the territory served by Buyer during the heating season just ended and during prior heating seasons. If such redetermination discloses that the Factor K is inaccurate, said engineers or representatives shall fix and agree upon the correct value of the Factor to be applied during the ensuing heating season, and such new value shall be binding on both parties during the ensuing heating season, and thereafter until changed as herein provided.

In the event that the said engineers or representatives shall fail to agree, they shall select an impartial engineer whose decision on the question or questions involved shall be final and shall be binding on both parties during the ensuing heating season and thereafter until changed as herein provided.

For the purpose of providing actual operating data, by means of which the accuracy of Factor K may be redetermined, Buyer agrees to install in the houses of at least one per cent of its Househeating Customers separate meters for the determination of the amount of gas sold to such customers for Househeating Purposes. Such customers shall be selected in such manner as to give a representative [fol. 514] cross section of the consumption of Buyer's Househeating Customers.

4. On or before the fifth day of each month, Buyer shall render to Seller a statement showing for the preceding calendar month all data (other than the total daily and monthly deliveries of natural gas by Seller to Buyer) necessary to enable Seller to make the computations called for by the provisions of this Article II.

5. Representatives of Seller shall have the right at all reasonable times to inspect, audit and check the records of Buyer for the purpose of verifying or correcting any of the statements rendered to Seller by Buyer pursuant to the provisions of Section 4 of this Article II.

### Article III

#### Buyer's Covenant

1. Buyer agrees promptly to inaugurate a campaign and diligently to continue its efforts to induce customers in the territory served by Buyer to install the necessary equipment and to use natural gas for heating their houses.

### Article IV

#### New Special Househeating Customers

1. For Househeating Customers obtained by Buyer, whose premises are heated solely by gas through the means of a central heating system (hereinafter in this Article IV referred to as "Special Househeating Customers") in addition to those Buyer has obtained prior to May 1, 1936, Seller will pay to Buyer, within the dates and limits hereinafter specified, the amounts set forth in the following table:

[fol. 515]

Obtained during period		Total payment per new customer		
Commencing	Ending			
May 1, 1936	April 30, 1937	\$10.00	Not exceeding 5,000 customers	
" " 1937	" " 1938	8.00	" "	4,000 "
" " 1938	" " 1939	6.00	" "	3,000 "
" " 1939	" " 1940	4.00	" "	3,000 "
" " 1940	" " 1941	2.00	" "	3,000 "

2. As soon as practicable after the execution of this Supplemental Gas Contract, Buyer shall furnish to Seller a statement of the number of its Special Househeating Customers on May 1, 1936. On or before the 10th day of the month following the rendition of the aforesaid statement, and on or before the 10th day of each calendar month thereafter, to and including the month of May, 1941, Buyer shall furnish to Seller a statement of the total number of new Special Househeating Customers obtained subsequent to the 1st day of May next preceding the month for which such statement is rendered and actually connected to its



distribution system on the last day of the preceding calendar month.

3. The payments above specified shall be made per new Special Househeating Customer, by credit against the monthly statement rendered in August following the close of the yearly period in question for natural gas sold by Seller to Buyer under this Agreement. No payments shall be made pursuant to this Section 3 in respect of new Special Househeating Customers obtained after April 30, 1941.

Should Buyer obtain fewer new Special Househeating Customers in any year than the maximum for which Buyer would be entitled for such year to receive the payments above specified, the number for which Buyer would be entitled for the succeeding year to receive the payments for the succeeding year shall be increased by the arithmetic [fol. 516] deficit of the previous year. Except as the maximum number of new Special Househeating Customers for which Buyer would be entitled for any year to receive the payments above specified may be increased as provided in this paragraph, no payments shall be made at any time on account of new Special Househeating Customers obtained by Buyer in any year in excess of the maximum number set forth in the foregoing table.

4. Payments in any year shall be based on the monthly average of the monthly totals of the number of new Special Househeating Customers to whom such payments are applicable. Said average shall be determined from Buyer's records and the monthly statements referred to in Section 2 of this Article IV.

5. Representatives of Seller shall have the right at all reasonable times to inspect, audit and check the records of Buyer for the purpose of verifying or correcting statements of Buyer concerning number of new Special Househeating Customers secured or actually served during any period in question.

## Article V

### Termination

If Buyer shall fail to sell and distribute gas having a heating value approximately equal to the heating value of the natural gas delivered by Seller to Buyer under the Gas Contract, this Supplemental Gas Contract shall terminate and be automatically cancelled and thereafter all

payments for such natural gas shall be made pursuant to the provisions of Article VII of the gas contract. In no event shall the life of this Supplemental Gas Contract exceed the life of the Gas Contract.

[fol. 517]

## Article VI

### Miscellaneous Provisions

1. Seller shall not be required, by reason of anything contained herein, to supply in the aggregate hereunder and under the Gas Contract, more than 90,000,000 cubic feet or its equivalent, 912,600 therms, of natural gas in any one day.

2. All of the provisions of the Gas Contract, except in so far as they are inconsistent herewith, shall be applicable to natural gas sold and purchased for Househeating Purposes hereunder.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries the day and year first above written.

(Duly executed by respective parties.)

### Exhibit 2-c

Agreement dated the 30th day of December, 1936, between Panhandle Eastern Pipe Line Company (Seller), and Detroit City Gas Company (Buyer).

Buyer represents that its total gas requirements and the number of customers who desire gas for house heating purposes have increased much more rapidly than expected, and accordingly the number of additional househeating customers secured by Buyer will in all probability exceed the limitations as to period specified in the second paragraph of Section 8 of Article I and in Section 1 of Article IV of the Supplemental Gas Contract dated the 2nd day of June 1936, between the parties hereto and Buyer is desirous that the limitations as to period as fixed in said second paragraph of Section 8 of Article I and in Section 1 of Article IV be eliminated.

Seller is willing that Buyer should increase its natural gas requirements through the acquisition of additional

househeating customers within the limitations of twenty thousand customers as expressed in the Supplemental Gas Contract hereinabove referred to and is willing in order that househeating customers may be secured more rapidly than as provided for in said sections of said Supplemental Gas Contract, that said Supplemental Gas Contract be modified as hereinafter provided.

Now, therefore, in consideration of the mutual covenants and agreements of the parties herein set forth the parties hereto covenant and agree as follows:

1. The second paragraph of Section 8 of Article I of the Supplemental Gas Contract shall be amended by deleting therefrom the following words:

“not exceed 6,000 in connection with each of the months prior to May, 1937, 10,000 in connection with each of the months after April, 1937 and prior to May, 1938, 13,000 in connection with each of the months after April, 1938 and prior to May, 1939, 16,000 in connection with each of the months after April, 1939 and prior to May, 1940 and shall”.

2. Section 1 of Article IV shall be amended to read as follows:

[fol. 519] “1. For househeating customers obtained by Buyer in the period commencing on May 1, 1936 and ending on April 30, 1941, whose premises are heated solely by gas through the means of a central heating system (hereinafter in this Article referred to as “Special Househeating Customers”) in addition to those Buyer has obtained prior to May 1, 1936, Seller will pay to Buyer, the amounts set forth in the following table:

Total payment per new customer

\$10 for the first 5,000 customers
\$8 for the next 4,000 customers
\$6 for the next 3,000 customers
\$4 for the next 3,000 customers
\$2 for the next 3,000 customers

“No payments shall be made at any time on account of new Special Househeating Customers obtained by Buyer in excess of the maximum number of 18,000 set forth in the foregoing table.”



3. Section 3 of Article IV of the Supplemental Gas Contract shall be amended by eliminating the second paragraph thereof.

4. Except as above amended, all the terms, provisions and conditions of the Supplemental Gas Contract shall remain unchanged.

In witness whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized and their respective corporate seals to be hereunto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties.)

[fol. 520]

Exhibit 2-d

Third Supplemental Contract between Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company.

Agreement made this 29th day of September, 1939, by and between Panhandle Eastern Pipe Line Company, a Delaware corporation, hereinafter called "Seller," and Michigan Consolidated Gas Company (formerly Detroit City Gas Company), hereinafter called "Buyer."

Under date of August 31, 1935, the parties entered into a contract, hereinafter called "Gas Contract," whereby, among other things, Seller agreed to sell and deliver to Buyer and Buyer agreed to purchase and receive from Seller all of the natural gas requirements of Buyer within the limits therein specified.

Under date of June 2, 1936, the parties entered into a supplemental gas contract, hereinafter called "Supplemental Gas Contract," providing, among other things, for certain modifications of the Gas Contract with respect to natural gas for resale to househeating customers.

Under date of December 30, 1936, the parties entered into a contract hereinafter called "Second Supplemental Gas Contract," which modified and amended certain provisions of the Supplemental Gas Contract.

Buyer represents that: (a) Since the effective date of the Gas Contract, its business of distributing and selling natural gas in and adjacent to the City of Detroit, Michigan, has increased to such an extent as to make it necessary

[fol. 521] and desirable that the maximum amount of natural gas available to it under the Gas Contract be increased, (b) since the execution and delivery of the Supplemental Gas Contract, it has obtained additional househeating customers approaching in number the twenty-thousand (20,000) maximum considered for billing purposes thereunder and desires that said maximum provision be modified, and (c) in the practical application of certain of the provisions of the Supplemental Gas Contract, it is possible that Buyer may be required to pay for househeating gas during certain summer days when no degree day deficiency occurs and desires that said Supplemental Gas Contract be modified and amended in order to remove that possibility; and the parties are willing to modify and amend the above mentioned contracts accordingly.

Now, therefore, in consideration of the mutual covenants and agreements of the parties as herein set forth, the parties hereto covenant and agree as follows:

### Article I

It is understood that under the terms and provisions of the Gas Contract, Seller is obligated to sell and deliver to Buyer the natural gas requirements of Buyer, but not in excess of ninety million (90,000,000) cubic feet or its assumed equivalent of nine hundred twelve thousand six hundred (912,600) therms per day, which constitutes Seller's maximum obligation under said contract.

It is agreed that said maximum obligation under said Gas Contract may be increased in multiples of five million (5,000,000) cubic feet, or its assumed equivalent of fifty [fol. 522] thousand seven hundred (50,700) therms, at the option of Buyer to an aggregate total amount of one hundred million (100,000,000) cubic feet, or its assumed equivalent of one million fourteen thousand (1,014,000) therms per day. In the event Buyer desires to exercise said option, it shall do so by giving to Seller notice in writing at least six (6) months prior to the end of any calendar year, except with respect to the year 1939, in which year such notice shall be given at least three (3) months prior to the end of the calendar year, and thereupon effective on the first day of the next succeeding calendar year, Seller's maximum obligation shall be increased by the amount designated in said notice.

Under the terms of the Gas Contract, Buyer is obligated to take and pay for not less than certain annual amounts of natural gas specified therein. In lieu of said provision, commencing with the calendar year 1940, Buyer shall take and pay for annually, at the prices provided for in said contract, not less than one hundred fifty-two million one hundred thousand (152,100,000) therms, which amount shall be increased by eight million four hundred fifty thousand (8,450,000) therms per year for each five million (5,000,000) cubic feet per day increase in Seller's maximum obligation if, as, and when Seller's maximum obligation is increased as hereinabove provided.

## Article II

The second paragraph of Section 8 of Article I of the Supplemental Gas Contract, as amended by the Second Supplemental Gas Contract, is hereby modified and amended so that the same shall hereafter read as follows:

[fol. 523] "In order to limit the extent of the application of the special rate for Househeating Purposes herein provided for, it is agreed that the Average Number of Househeating Customers used as a factor for the purpose of the computations to be made under this Section shall never exceed twenty five thousand (25,000), even if the actual Average Number of Househeating Customers in any month is greater than twenty-five thousand (25,000)."

## Article III

Section 10 of Article I of the Supplemental Gas Contract is hereby modified and amended so that said Section shall hereafter read as follows:

"The term 'Average Househeating Daily Delivery of Seller for the current billing month' shall mean the number of therms, if any, resulting from the following calculation:

$$\frac{(a) + (b) - (c)}{(d)}$$

where

(a) = the total number of therms for said month of 'Househeating Daily Delivery of Buyer,'



- (b) = the total number of therms for said month of 'Total Measured Deliveries,'
- (c) = the total number of therms for said month of gas sent out into its distribution system by Buyer, and
- (d) = the number of days in said month."

Except as modified and amended by Articles I, II, and III hereof, the terms and provisions of the Gas Contract [fol. 524] and Supplemental Gas Contract as amended by the Second Supplemental Gas Contract shall remain in full force and effect.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective officers thereunto duly authorized and their respective corporate seals to be hereto affixed the day and year first above written.

(Duly executed by respective parties)

#### Exhibit 2-e

#### Fourth Supplemental Contract between Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company

Agreement made this 29th day of June, 1940, by and between Panhandle Eastern Pipe Line Company, a Delaware Corporation, hereinafter called "Seller," and Michigan Consolidated Gas Company (formerly Detroit City Gas Company), hereinafter called "Buyer."

Under date of August 31, 1935, the parties entered into a contract, hereinafter called "Gas Contract," whereby among other things, Seller agreed to sell and deliver to Buyer and Buyer agreed to purchase and receive from Seller all of the natural gas requirements of Buyer within the limits therein specified.

Under date of June 2, 1936, the parties entered into a supplemental gas contract, hereinafter called "Supplemental Gas Contract," providing, among other things, for certain modifications of the Gas Contract with respect to natural gas for resale to househeating customers.

[fol. 525] Under date of December 30, 1936, the parties entered into a contract, hereinafter called "Second Supplemental Gas Contract," which modified and amended certain provisions of the Supplemental Gas Contract.

Under date of September 29, 1939, the parties entered into a contract, hereinafter called "Third Supplemental Contract," which also modified and amended certain provisions of the Gas Contract, the Supplemental Gas Contract, and the Second Supplemental Gas Contract. Buyer represents that:

(a) Since the effective date of the Gas Contract and since the date of the execution and delivery of the Third Supplemental Contract, its business of distributing and selling natural gas in and adjacent to the City of Detroit, Michigan, has increased to such an extent as to make it necessary and desirable that the maximum amount of natural gas available to it under the Gas Contract, as heretofore modified and amended, be increased;

(b) According to its best judgment and upon estimates which it has made based upon its experience in furnishing natural gas to its customers in and adjacent to the City of Detroit, Michigan, Buyer will require on its maximum day during the ensuing winter of 1940-1941 a maximum of one hundred twenty-five million (125,000,000) cubic feet of natural gas to meet the requirements of its customers.

(c) It is expending during the current year a sum of money in excess of one million dollars (\$1,000,000) in additional lines and other facilities in its gas distribution system in the City of Detroit, Michigan, in order adequately [fol. 526] to meet the growing demands of its customers and to serve additional customers attached or to be attached to its distribution system, and

(d) It is desirous that the Gas Contract, as heretofore supplemented and amended, be further modified and amended to the end that the maximum amount of natural gas available to it thereunder be increased to an aggregate total amount of one hundred twenty-five million (125,000,000) cubic feet per day.

Seller represents that in order to make such additional natural gas available to Buyer, it will be required to construct and install certain additional facilities to its pipe line system and that under present conditions, it is estimated that such facilities cannot be completed in less than six (6) months from the date hereof, but is willing to proceed with all due diligence and dispatch with the construction and installation thereof to the end that such additional

gas may be made available to Buyer at the earliest practicable date.

The parties are willing to modify the above-mentioned contracts accordingly.

Now, therefore, in consideration of the mutual covenants and agreements of the parties herein set forth, the parties hereto covenant and agree as follows:

### Article I

It is understood that under the terms and provisions of the Gas Contract and the Third Supplemental Contract, Seller is obligated to sell and deliver to Buyer, the natural gas requirements of Buyer but not in excess of one hundred million (100,000,000) cubic feet or its assumed equivalent [fol. 527] or one million fourteen thousand (1,014,000) therms per day which constitute Seller's maximum obligation under said contract.

Promptly upon execution and delivery hereof, Seller agrees to commence the construction and installation of such additions to its pipe line system as may be necessary to enable it to deliver such natural gas as Buyer may require up to but not in excess of one hundred twenty-five million (125,000,000) cubic feet or its assumed equivalent of one million two hundred sixty-seven thousand five hundred (1,267,500) therms per days and complete the same with due diligence. Effective upon the date of the completion of such additions to Seller's pipe line system or on December 15, 1940, whichever shall first occur, Seller's said maximum obligation under said Gas Contract and Third Supplemental Contract shall be and the same is increased to an aggregate total amount of one hundred twenty-five million (125,000,000) cubic feet or its assumed equivalent of one million two hundred sixty-seven thousand five hundred (1,267,500) therms per day.

### Article II

Except as modified and amended by Article I hereof, the terms and provisions of the Gas Contract and Supplemental Gas Contract, as heretofore amended by the Second Supplemental Gas Contract and the Third Supplemental Contract, shall remain in full force and effect.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective officers there-



unto duly authorized and their respective corporate seals [fol. 528] to be hereto affixed the day and year first above written.

(Duly executed by respective parties)

### Exhibit 2-f

Panhandle Eastern Pipe Line Company's rate schedules Gd-1 and Rd-2 and certain general terms and conditions effective as to all bills rendered on or after November 1, 1942.

Seller — Panhandle Eastern Pipe Line Company

Purchaser — Michigan Consolidated Gas Company

Supplement No. 5

to

Rate Schedule 12

### Special Agreement

Note: This rate schedule and all prior supplements thereto are suspended or amended only to the extent provided in this supplement, which is composed of seller's schedules Gd-1 and Rd-2 and paragraph 3 and 4 of the applicable general terms and conditions.

Issued in compliance with an order of the Federal Power Commission, Docket Nos. G-200 and G-207, entered 23rd day of September 1942.

[fol. 529]

Rate Schedule Gd-1

Deliveries to Utilities—Firm, Resale

Available

This rate schedule is available, with respect to sales of gas subject to the jurisdiction of Federal Power Commission, to any properly qualified utility (hereinafter referred to as the Utility) in any of the States of Indiana, Ohio, or Michigan having the necessary franchises, permits, grants and rights requisite to the distribution and sale of natural gas, having a pipe line connection for delivery of the gas purchased hereunder with the pipe line system of Panhandle Eastern Pipe Line Company (hereinafter re-

ferred to as the Company) and agreeing to purchase from the Company its natural gas requirements to the extent provided in any existing rate schedule or contract effective as between the Company and the Utility.

### Applicable

(a) This rate schedule shall apply to all natural gas purchased on a firm basis by the Utility for resale to domestic and other customers, except such natural gas as the Utility shall purchase, under any other rate schedule of the Company available to the Utility.

(b) Subsequent to October 1, 1945, the Utility, at its option, may purchase gas under this rate schedule for resale to any individual customer whose present, or estimated, annual use of gas is less than one million two hundred thousand (1,200,000) therms and whose gas requirements were purchased by the Utility from the Company [fol. 530] on an interruptible basis prior to October 1, 1945.

(c) This rate schedule shall not apply to gas purchased by the Utility from the Company for resale to any individual customer whose present, or estimated, annual use of gas exceeds one million two hundred thousand (1,200,000) therms, unless such gas requirements were purchased by the Utility from the Company on a firm basis prior to October 1, 1945.

### Character of Service

Deliveries hereunder shall take preference over all direct industrial sales and deliveries made for resale on an interruptible basis.

### Rate

(a) For all gas delivered hereunder, each month, in Indiana, Ohio and Michigan:

for that number of therms herein defined as "base load" one and eight-five hundredths (1.85) cents per therm.

for that number of therms in excess of "base load" two and six tenths (2.6) cents per therm.

(b) Determination of "base load" for each billing month.

(1) The "daily base load" applicable to each period of twelve (12) billing months shall be the average number of therms delivered per day during the four (4) consecutive months of June to September, both inclusive, immediately preceding such period. Provided, however, if the Company, due to its inability [fol. 531] or on its own initiative, fails to make delivery of normal requirements or agreed amounts, such curtailed deliveries and the days on which made shall be excluded in the determination of "daily base load."

(2) The daily base load shall be determined once each year as soon after October 1st as practicable, and the daily base load so determined shall be effective for the immediately succeeding twelve (12) months' period, beginning with the October billing month.

(3) The "base load" shall be the daily base load multiplied by the number of days in the billing month or shall be the total number of therms delivered, whichever is less.

### Interim Rate

In the event deliveries of gas hereunder are commenced subsequent to June first (1st) the "base load" rate as set forth above shall apply to all deliveries from the date of initial delivery to the expiration of the period of the first full four (4) consecutive months of June to September, both inclusive.

### Minimum Bill

None.

### Delayed Payment Penalty

Refer to Paragraph 6 of the General Terms and Conditions applicable to this rate schedule.

### [fol. 532] Determination of Deliveries

The deliveries hereunder to any Utility shall be determined by properly deducting the quantity of gas, if any,



delivered to the Utility under all other rate schedules and contracts, from the total of all gas delivered to the Utility.

### Metering Base

Refer to Paragraph 3 of the General Terms and Conditions applicable to this rate schedule.

### Special Provisions

(a) All of the General Terms and Conditions set forth on Sheets numbered 10 to 16, inclusive, are applicable to this rate schedule and are hereby made a part hereof, except where paragraph (b) following applies.

(b) Any contract existing between the Company and the Utility with respect to natural gas service on file with the Federal Power Commission shall be deemed to be supplemented and amended by this rate schedule, except that only Paragraph 3, entitled "Measurements" and Paragraph 4, entitled "Measuring Equipment" of the General Terms and Conditions shall supersede and amend existing contract provisions.

[fol. 533]

### Rate Schedule Rd-2

Deliveries to Utilities—Interruptible, Resale

### Available

This rate schedule is available to any utility (hereinafter referred to as the Utility) in the State of Indiana, in the State of Ohio, or in the State of Michigan, which purchases natural gas from Panhandle Eastern Pipe Line Company (hereinafter referred to as the Company) under Rate Schedule Gd-1 of the Company.

### Applicable

(a) Prior to October 1, 1945, this rate schedule applies to all natural gas purchased by the Utility from the Company on an interruptible basis for resale to individual customers.

(b) Subsequent to October 1, 1945, this rate schedule shall apply to natural gas purchased by the Utility for resale to any individual customer whose present, or estimated, annual use of gas exceeds one million two hundred thousand (1,200,000) therms unless Utility has purchased

such customer's requirements on a firm basis prior to October 1, 1945, and elects to continue doing so under Rate Schedule Gd-1.

(c) Subsequent to October 1, 1945, this rate schedule may apply (at Utility's option) to any gas purchased by the Utility on an interruptible basis for resale to any individual customer of the Utility whose present, or estimated, annual use of gas is less than one million two hundred thousand (1,200,000) therms, provided that such customer of the Utility had been supplied by the Utility prior to [fol. 534] October 1, 1945, with gas purchased by the Utility from the Company on an interruptible basis.

(d) Subsequent to October 1, 1945, and subject to the provisions of Paragraph (c) of the Special Provisions hereof, this rate schedule may apply (at Utility's option) to gas purchased by the Utility on an interruptible basis for resale to any individual customer of the Utility whose present, or estimated, annual use of gas is less than one million two hundred thousand (1,200,000) therms.

#### Character of Service

Deliveries hereunder shall be subject to curtailment or interruption when such gas is needed to meet the requirements of customers receiving service under classifications contemplating an uninterruptible supply of gas from the pipe line system of the Company.

#### Rate

For all gas delivered hereunder, each month: one and sixty-five hundredths (1.65) cents per therm.

#### Minimum Bill

None.

#### Delayed Payment Penalty

Refer to paragraph 6 of the General Terms and Conditions applicable to this rate schedule.

#### Determination of Deliveries

The Utility shall install, maintain and operate at its own expense meters and other necessary measuring equipment [fol. 535] through which gas sold to each customer,

whose gas requirements are purchased hereunder, shall be measured. The provisions of paragraph 3 and 4 of the General Terms and Conditions shall also apply to such meters and measuring equipment.

#### Metering Base

Refer to paragraph 3 of the General Terms and Conditions applicable to this rate schedule.

#### Special Provisions

(a) All of the General Terms and Conditions set forth on Sheets numbered 10 to 16, inclusive, are applicable to this rate schedule and are hereby made a part hereof, except where paragraph (b) following applies.

(b) Any contract existing between the Company and the Utility, with respect to natural gas service, on file with the Federal Power Commission shall be deemed to be supplemented and amended by this rate schedule, except that only Paragraph 3, entitled "Measurements" and Paragraph 4, entitled "Measuring Equipment" of the General Terms and Conditions shall supersede and amend existing contract provisions.

(c) Whenever the Utility desires Company to increase its commitment hereunder to permit the Utility to sell gas to a customer whose supply had not been previously purchased under this schedule, the Utility shall make application to the Company and upon such application give the following information:

(1) The point of delivery at which Utility wishes to receive such increased commitment.

[fol. 536] (2) Estimates of the monthly and maximum daily gas requirements of such plant.

(3) Assurance that such customer, if served, will be supplied under a contract with the Utility, providing for curtailment or interruption of supply, in accordance with the provisions of this rate schedule.

The Company will undertake to sell and deliver gas hereunder to the Utility for resale to such customer if the Company, in its judgment, has a sufficient supply of gas and adequate facilities with which to make such deliveries, and if Utility is entitled to purchase such gas under the provisions of this schedule.



Thereafter and before delivery of gas for such customer's requirements is commenced, Utility shall supply Company with the name and location of the customer and a description of the purpose or purposes for which the gas is to be utilized.

### General Terms and Conditions

#### 3. Measurements

(a) The sales unit of the gas deliverable hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

(b) The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas, in British thermal units per cubic foot, and by dividing the product by one hundred thousand (100,000).

[fol. 537] (c) The volume and the total heating value, of the gas delivered hereunder, shall be determined as follows:

(1) The unit of volume, for the purpose of measurement and for the determination of total heating value, shall be one (1) cubic foot of gas saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(2) The total heating value of the gas, per cubic foot, shall be determined by taking the arithmetic average of the heating value as recorded by the recording calorimeter of the Company located at its Glenarm Compressor Station or at such other place as may be agreed upon.

(3) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Point of Delivery above sea level or variations in such atmospheric pressure from time to time.

(4) At points of delivery where the installation of a recording thermometer is provided the arithmetic average of the temperature of the gas, flowing through the

meters, as recorded, shall be used in computing gas volumes; where such installation is not provided the temperature of the gas shall be assumed to be fifty (50) degrees Fahrenheit.

(5) The deviation from Boyle's Law, the specific gravity and relative humidity of the gas delivered hereunder shall be determined, by approved methods, at the beginning of delivery of gas and with such reasonable frequency thereafter as is found expedient in practice, and where applicable such determinations shall be used in computing gas volumes.

#### 4. Measuring Equipment

(a) The Company will install, maintain and operate, at its own expense, at or near each Point of Delivery, a meter or meters and other necessary measuring equipment by which the volume of gas delivered to the Utility hereunder shall be measured. The Company will also install, maintain and operate at its own expense, at or near each Point of Delivery, such pressure regulating equipment as may be necessary.

(b) The Utility may install, maintain and operate such check measuring equipment as it shall desire, provided that such equipment shall be so installed as not to interfere with the operation of the Company's measuring equipment at or near the Point of Delivery. The Company shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the Utility.

(c) Both the Company and the Utility shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with the other's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the owner, but upon request will submit to the other such records and charts, together with calculations therefrom, for the other's inspection and verification, subject to return within ten (10) days after receipt thereof.

[fol. 539] (d) All installations of measuring equipment, applying to or affecting deliveries hereunder, shall be made in such manner as to permit an accurate determination of the quantity of gas delivered and ready verification of

the accuracy of measurement. Reasonable care shall be exercised by both the Company and the Utility in the installation, maintenance and operation of pressure regulating equipment so as to avoid, so far as practicable, any inaccuracy in the determination of the volume of gas delivered hereunder.

(e) In the event a meter is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated:

- (1) by using the registration of any check meter or meters if installed and accurately registering, or in the absence of (1);
- (2) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or, in the absence of both (1) and (2) then;
- (3) by estimating the quantity of delivery by deliveries during periods under similar conditions when the meter was registering accurately.

(f) The accuracy of the Company's measuring equipment shall be verified by the Company at reasonable intervals, and, if requested, in the presence of representatives of the Utility but the Company shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event either the Company or the Utility shall notify the other that it desires a special test of any measuring equipment the Company and the Utility shall cooperate to secure a prompt verification of the accuracy of such equipment.

[fol. 540] (g) If, upon test, any measuring equipment, including recording calorimeter, is found to be in error not more than two (2) per cent, previous recordings of such equipment shall be considered correct in computing deliveries hereunder; but such equipment shall be adjusted at once to record accurately. If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon such correction shall be for a period extending over one-half of



the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

(h) Both the Company and the Utility shall preserve for a period of at least five (5) years all test data, charts and other similar records.

### Exhibit 3

Industrial Gas Contract between Panhandle  
Eastern Pipe Line Company and Ford  
Motor Company, dated August  
20, 1945.

(See Exhibit A, attached to Plaintiff's Bill of  
Complaint, Volume 1, page 14)

[fol. 541]

### Exhibit 4

Letter of Federal Power Commission to Panhandle  
Eastern Pipe Line Company, dated  
December 6, 1945.

Panhandle Eastern Pipe Line Company,  
135 La Salle Street.  
Chicago 3, Illinois.

Subject: Transportation and sale of natural gas to Ford  
Motor Company.

Gentlemen:

The Federal Power Commission understands that Panhandle Eastern Pipe Line Company is considering a contract with the Ford Motor Company for the firm supply of 25 million cubic feet of natural gas per day, with an additional 25 million cubic feet per day on an interruptible basis, to meet certain requirements at its Dearborn plant.

The Commission desires full information with respect to this matter, particularly (1) all facts necessary to show that Panhandle Eastern Pipe Line Company has available capacity in its existing lines to supply 25 million cubic feet of natural gas per day on a firm basis, and a like amount on an interruptible basis, in the vicinity of Dearborn, Michigan, (2) the point or points at which connection is to be made with existing facilities of Panhandle to provide for the supply of natural gas to the Dearborn plant of Ford Motor Company, showing all persons who will

participate with Panhandle in providing such service and the extent of the participation by each, (3) the [fol. 542] nature, extent and cost of all facilities required, in addition to existing facilities, to provide service to the Ford plant at Dearborn, Michigan, (4) the arrangement or arrangements made or contemplated with respect to the person or corporation to be ultimately charged with the cost of such additional facilities, as well as full information regarding the party who is to undertake and be responsible for the immediate construction of such additional facilities, (5) detailed information regarding all changes, alterations, and modifications in the present pipeline facilities and operations of Panhandle Eastern Pipe Line Company now contemplated, or which will be required, to provide the required pipeline capacity to supply 25 million cubic feet of natural gas on a firm basis, and a like amount on an interruptible basis to the Ford Motor Company at Dearborn, Michigan, (6) what applications, if any, Panhandle proposes to file with this Commission under the provisions of the Natural Gas Act, and (7) specific use or uses to be made by Ford Motor Company of the firm gas and of the interruptible gas proposed to be sold to it.

Your full reply with respect to the above matters not later than December 15, 1945, will be appreciated.

Yours very truly, (Signed) Leon M. Fuquay, Secretary.

[fol. 543]

#### Exhibit 5

Letter of Panhandle Eastern Pipe Line Company  
to Federal Power Commission, dated  
December 12, 1945.

Mr. Leon M. Fuquay, Secretary  
Federal Power Commission  
1800 Pennsylvania Avenue  
Washington 25, D. C.

Dear Mr. Fuquay:

We have your letter dated December 6, 1945, regarding a contract between this company and the Ford Motor Company for supplying natural gas, and we are very

glad to comply with your request for full information with respect thereto.

First of all, we point out that *no firm supply of gas* is involved in this transaction, and the Commission has clearly been misinformed in this regard.

Over a considerable period of time, the Ford Motor Company has been seeking to obtain a contract with us for a supply of gas direct from our pipeline at its Dearborn plant to meet substantial requirements of natural gas needed upon conversion of that plant to postwar production. On October 20, 1945, such a contract was executed on behalf of this company. A copy of that contract is enclosed herewith for the information of the Commission.

Answering the specific inquiries in the order set forth in your letter, the requested information is as follows:

[fol. 544] 1. No firm supply of gas is involved (see paragraph 19 of the contract), which would appear to make it unnecessary to go into the question of capacity. We feel confident, however, that we have sufficient capacity to maintain satisfactory service on an interruptible basis.

2. Sale and delivery of the gas will be made at a point on Panhandle's main transmission line where such line crosses the property of the Ford Motor Company at its Dearborn plant, and no person will participate with Panhandle in providing the service.

3. Panhandle will not require any facilities in addition to its existing facilities, except the construction of a regulator and metering station on its existing pipeline at the point where it will connect with the facilities of the Ford Motor Company. (See paragraphs 10 and 27 of the contract.)

4. Panhandle will construct the regulator and metering station and will pay for the same out of its own funds.

5. No changes, alterations, or modifications in our present pipeline facilities are contemplated and, as stated above no supply of natural gas on a firm basis is involved.

6. We are advised by our attorneys that it is not necessary for Panhandle to file any application with the Commission under the provisions of the Natural Gas Act in connection with the sale of gas to the Ford Motor Company under this contract, since the construction and operation of Panhandle's existing facilities are authorized by certificates of convenience and necessity heretofore issued by



the Commission, and the proposed metering and regulator station to be constructed are facilities incident to a direct sale of gas, subject matter excluded from the application of [fol. 545] the provisions of the Natural Gas Act by Section 1(b) thereof.

7. We are advised by the Ford Motor Company that the gas to be delivered under this contract will be used in open hearth furnaces, soaking pits, and rolling mill furnaces in connection with the production of steel and also in heat treating furnaces, metal melting, glass plant, cement plant, and other miscellaneous usages in the production of automobiles.

I have endeavored to give you all of the information mentioned in your letter and, if the Commission desires to go into the matter further, I shall be very glad to come to Washington and confer with the Chairman or any of the members of the Commission.

Very truly yours, W. G. Maguire.

#### Exhibit 6

Telegram of Michigan Public Service Commission  
to Federal Power Commission, dated  
December 12, 1945.

The Michigan Public Service Commission is in receipt of a copy of the telegram of the Michigan Consolidated Gas Company requesting that you investigate the action of the Panhandle Eastern Pipe Line Company in connection with a proposed sale of natural gas to the Ford Motor Company, thereby invading the distribution area of the Michigan Company, and that you forthwith issue a cease and desist order against Panhandle. This Commission has received a telegram from the Michigan Company requesting that this Commission take appropriate action in [fol. 546] the premises. A copy of which telegram we understand has been forwarded to you.

This Commission feels that the situation is urgent and that action should be taken without delay to preserve the status quo. It, therefore, without prejudice to the exercise of its own proper jurisdiction in the premises concurs in the request of the gas company that you enter a cease and desist order against Panhandle, pending Commission investigation. In view of the fact that certain jurisdictional

questions will require determination, this Commission respectfully suggests a joint investigation at which time these questions may be resolved and a method of procedure adopted whereby each Commission may exercise to the full extent its proper and appropriate jurisdiction.

Michigan Public Service Commission.

cc Michigan Consolidated Gas Company, 415 Clifford, Detroit 26, Mich.

Ford Motor Company, Dearborn, Mich.

Panhandle Eastern Pipe Line Company, 135 S. La Salle Street, Chicago, Ill.

City Clerk, Village of Melvindale, Melvindale, Mich.

City Clerk, City of Dearborn, Dearborn, Mich.

State Highway Department, Lansing, Michigan.

Wayne County Road Commissioners, 3800 Barlum Tower, Detroit, Mich.

[fol. 547]

Exhibit 7

Telegram of Michigan Consolidated Gas Company to Federal Power Commission, Dated December 12, 1945

We understand that Panhandle Eastern Pipe Line Company is undertaking to sell natural gas to the Ford Motor Company plant in Dearborn Michigan through an interconnection to be made at a point on the Panhandle line approximately one thousand yards below the main delivery point to us. An eighteen inch line to be constructed to the Ford plant for such interconnection will duplicate and substantially parallel the existing twelve inch line through which Michigan Consolidated Gas Company is now supplying the Ford plant. This constitutes an attempt by Panhandle to invade our distribution area denying to us gas which we are entitled to purchase under applicable rate schedules now in force and to sell that gas directly at unregulated rates to a large industrial customer which we are now serving. This will deprive our company of over one million dollars gross revenue annually and will tend to adversely affect our ability to maintain proper service to consumers in the Detroit district at reasonable rates.

We also feel that if Panhandle succeeds in this effort it will make further attempt to raid our distribution market. We have brought this matter to the attention of the

Michigan Public Service Commission by a telegram of even date, copy of which we are mailing you today together with confirmation of this telegram. We respectfully request that your Honorable Commission proceed to exercise its jurisdiction to the full extent conferred upon it by law, institute an immediate investigation, and [fol. 548] order Panhandle to show cause why it should not obtain appropriate authority before proceeding further in this matter and fully perform its obligations under the provisions of its rate schedules now in force. We also understand that the proposed action by Panhandle is imminent and we therefore urge that Panhandle be ordered forthwith to cease and desist from taking any steps in furtherance of this project pending the Federal Power Commission's investigation and determination.

#### Exhibit 8

Order of Federal Power Commission Dated December 18, 1945, Ordering Panhandle Eastern Pipe Line Company to Show Cause, Instituting Investigation, Consolidating Proceedings and Fixing Date of Hearing

It appears to the Commission that:

(a) On September 7, 1945, the City of Detroit, Michigan, and the County of Wayne, Michigan, both municipal corporations of the State of Michigan, filed a joint complaint against Panhandle Eastern Pipe Line Company and Michigan Consolidated Gas Company alleging that existing contracts and arrangements between Panhandle Eastern Pipe Line Company (Panhandle) and Michigan Consolidated Gas Company (Michigan Consolidated) unlawfully limit the quantity of natural gas which Panhandle is obliged to supply to Michigan Consolidated to 125 million cubic feet in any one day; that Panhandle unlawfully refuses to supply natural gas to Michigan Consolidated during off-peak periods of time for underground storage; that Panhandle has otherwise unlawfully restricted the supply of natural gas to Michigan Consolidated in violation of the rights of public consumers in the City of Detroit and the County of Wayne, both in the State of Michigan.



(b) Although the joint complaint was served upon Panhandle on September 10, 1945, and upon Michigan Consolidated on September 13, 1945, with the request that answer to the complaint be filed within 30 days as required by Section 50.23 of the Commission's Provisional Rules of Practice and Regulations under the Natural Gas Act, no answer has been received from either Panhandle or Michigan Consolidated.

(c) This Commission having been informed that Panhandle Eastern Pipe Line Company was considering a contract with Ford Motor Company for the supply of natural gas for industrial use at its Dearborn plant, addressed a letter to Panhandle Eastern Pipe Line Company under date of December 6, 1945, requesting full information with respect to such proposed sale. On December 14, 1945, the Commission received Panhandle's reply enclosing a copy of its contract with the Ford Motor Company.

(d) The contract between Panhandle Eastern Pipe Line Company and the Ford Motor Company, as submitted by Panhandle Eastern Pipe Line Company, shows that it was executed on October 20, 1945, by Panhandle Eastern Pipe Line Company, and under its terms Panhandle is to supply natural gas to Ford [fol. 550] Motor Company for use as industrial fuel substantially as follows:

(1) Monday through Friday, both inclusive, excepting Holidays—25,000 MCF (plus or minus 10%) per day.

(2) Saturday, Sunday, and Holidays—Not more than 15,000 MCF per day.

(3) Upon six months' prior written notice to Seller, Buyer shall have the right at any time during the term hereof to purchase an additional volume of gas up to but not exceeding 25,000 MCF per day.

The agreement provides that deliveries of gas shall commence on or before May 1, 1946, and shall continue to and including November 30, 1948, and from year to year thereafter unless terminated by either party on 90 days prior written notice to the other.

(e) On December 12, 1945, a telegram was received from Michigan Consolidated Gas Company directing

the Commission's attention to the undertaking of Panhandle to sell natural gas to the Ford Motor Company, which is presently served by Michigan Consolidated Gas Company, and requesting the Commission to institute an immediate investigation concerning such proposed service. On December 13, 1945, a telegram was received from Michigan Public Service Commission joining in the complaint of the Michigan Consolidated Gas Company and requesting also that this Commission take appropriate action in the premises.

[fol. 551] The Commission *finds* that:

(1) The matters involved and the issues presented in these proceedings may involve substantially the same facts and issues, and good cause, therefore, exists for consolidating the above-docketed matters for the purposes of hearing.

(2) It is necessary and proper in the public interest, and to aid in the enforcement of the provisions of the Natural Gas Act (1) that an investigation be instituted by the Commission, upon its own motion, into and concerning the lawfulness of all contracts, practices, rules and regulations restricting or limiting the supply of natural gas, subject to the jurisdiction of the Commission, by Panhandle to Michigan Consolidated for resale or underground storage in the State of Michigan, and the reasonableness of rates and charges therefor, and (2) that Panhandle Eastern Pipe Line Company show cause in the manner and form hereinafter ordered in paragraph (A).

Therefore, the Commission *orders* that:

(A) Panhandle Eastern Pipe Line Company show cause at the public hearing hereinafter ordered:

(i) Why the supply of natural gas to Ford Motor Company, as provided in its contract of October 20, 1945, (1) will not impair its ability to provide adequate and reasonable natural gas service to consumers entitled to such service under the Natural Gas Act and orders of this Commission, and (2) will not violate

orders of this Commission authorizing the construction and limiting the operation of facilities under Section 7 of the Natural Gas Act as provided in such orders; and

(ii) Why appropriate and timely application should not be made under Section 7 of the Natural Gas Act for the construction and operation of all necessary pipe line facilities required for the interstate transportation of natural gas to the Ford Motor Company including all measuring and regulating equipment which may be required.

(B) An investigation be and it is hereby instituted for the purpose of enabling the Commission:

(i) To determine with respect to the sale of natural gas by Panhandle Eastern Pipe Line Company to Michigan Consolidated Gas Company whether in connection with such transportation or sale, subject to the jurisdiction of the Commission, any contract or arrangement relating to such supply, for resale or underground storage in the State of Michigan, or the rates, charges, or classifications demanded, observed, charged or collected for such gas, or any rules, regulations, practices or contracts relating to such supply or affecting such rates, charges or classifications are unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful and in violation of the provisions of the Natural Gas Act.

(ii) To determine and fix by order or orders just and reasonable rates, charges, classifications, rules, [fol. 553] regulations, practices or contracts to be thereafter observed and in force, if the Commission, after hearing has been had, shall find, with respect to the transportation and sale of natural gas by Panhandle Eastern Pipe Line Company to Michigan Consolidated Gas Company, that any rates, charges, classifications, rules, regulations, practices, or contracts, subject to the jurisdiction of the Commission, are unjust, unreasonable, unduly discriminatory or preferential.



(C) The above-entitled proceedings be and they are hereby consolidated for the purposes of hearing.

(D) A public hearing to be held with respect to the matters involved and the issues presented, as referred to in paragraph (A) above, commencing on January 7, 1946, at 10:00 a.m. (E.S.T.) in the Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(E) A public hearing with respect to the matters involved and the issues presented, as referred to in paragraph (B), above, be held on a date to be hereafter fixed by order of the Commission.

(F) Interested State commissions may participate in the said hearing, as provided for in Section 67.4 of the Provisional Rules of Practice and Regulations under the Natural Gas Act.

By the Commission.

/s/ Leon M. Fuquay, Secretary.

[fol. 554]

### Exhibit 9

Application of Panhandle Eastern Pipe Line Company to Federal Power Commission re certificate of convenience and necessity to serve Ford Motor Company.

Comes now Panhandle Eastern Pipe Line Company, hereinafter referred to as "Applicant," and with full reservation of its rights to contend that the Commission is without jurisdiction over the subject matter herein, files this application for a Certificate of Public Convenience and Necessity to construct and operate the proposed facility hereinafter described and for such other and further authorization as may be required to enable it to make the physical connection, the deliveries and the rendition of the service and sale of natural gas contemplated by its contract with the Ford Motor Company, as hereinafter more fully described.

1. Applicant is a corporation, organized and existing under the laws of the State of Delaware, with principal offices at 1221 Baltimore Avenue, Kansas City 6, Missouri, and at 135 South LaSalle Street, Chicago 3, Illinois, and owns and operates an integrated natural gas pipeline system situated in the States of Texas, Oklahoma, Kansas,

Missouri, Illinois, Indiana, Ohio and Michigan. Applicant is a "natural-gas company," as defined in the Natural Gas Act. It produces natural gas in the States of Texas and Kansas and purchases natural gas produced in the State of Oklahoma, and is engaged in the transportation and sale of such gas in interstate commerce (a) for resale for ultimate public consumption for domestic, commercial, industrial and other uses, and (b) directly to industries [fol. 555] and to others for their own use.

2. All communications in respect to the within application are to be addressed to John S. L. Yost, Counsel for Applicant, care of Panhandle Eastern Pipe Line Company, 135 South LaSalle Street, Chicago 3, Illinois.

3. Upon amendment of the Natural Gas Act on February 7, 1942 and within the period of time prescribed, Applicant applied for, and by the Commission's order of October 17, 1945, was granted a "Grandfather" certificate (Docket No. G-254) authorizing Applicant's continued operation of its properties over the routes and in the manner described in the said application, as amended.

4. As authorized by Section 57.5 of the Commission's Provisional Rules of Practice and Regulations under the Natural Gas Act, as Amended, Applicant respectfully refers the Commission to the applications as amended and supplemented, heretofore filed by Applicant and/or its former subsidiaries, Illinois Natural Gas Company and Michigan Gas Transmission Corporation, under Section 7 of the said Act, as amended, in Dockets Nos. G-254, G-452, G-459, G-543, G-619 and G-620 for a detailed and comprehensive description of its corporate organization and structure, of its existing utility operations and properties, of its gas reserves, and of the gas companies and other companies served by it, and of the areas in the States of Texas, Kansas, Missouri, Illinois, Indiana, Ohio and Michigan, served by such companies. The said applications, as amended, and supplemented, together with all exhibits filed therewith are incorporated herein by reference.

5. On the 20th day of October, 1945, Applicant entered into a written contract with Ford Motor Company of Dear- [fol. 556] born, Michigan, (hereinafter referred to as "Ford") for the sale and delivery to the said Company of certain quantities of natural gas on an interruptible

basis. A copy of said contract has been heretofore furnished to the Commission, together with Applicant's letter of December 12, 1945 addressed to the Commission, in reply to the Commission's letter to Applicant, dated December 6, 1945, both of which letters are incorporated by reference and made a part hereof. (A copy of the said contract, marked "Exhibit A," is attached hereto and made a part hereof.)

The said contract is on Applicant's printed form of industrial contracts. It contains the standard provisions embodied in all of Applicant's industrial contracts, including a provision (see paragraph 19 of said contract) giving Applicant, as seller, the right to curtail or interrupt deliveries of gas to buyer when, in seller's judgment, such gas is needed to meet the requirements of other customers receiving service either directly or indirectly from Applicant's pipeline system under classifications contemplating an uninterruptible supply of gas. Since the said contract neither provides for nor contemplates *firm* deliveries of gas to Ford, such supply of gas to the said company will not impair Applicant's ability to provide adequate natural gas service to its customers.

6. Under the terms and provisions of said contract natural gas is proposed to be sold and delivered by Applicant to Ford at a point on Applicant's main transmission pipeline in Wayne County, Michigan. Said delivery point is shown on the plat, marked "Exhibit B", attached hereto and made a part hereof.

7. The only facility proposed to be constructed and operated by Applicant in connection with the said sale and [fol. 557] delivery of natural gas to Ford is a measuring and regulator station and appurtenant equipment. The said facility consists of the following: a triple orifice measuring and regulator station, consisting of three 10-inch meter runs, three 8-inch regulators, two differential limit control valves and other appurtenant piping, valves and equipment necessary to control properly and measure varying quantities of natural gas for delivery to Ford at the said point of connection on Applicant's main transmission line. The said measuring and regulator station is to be located contiguous to Applicant's 22" main line



at a point approximately 200 feet West of its crossing under the Detroit, Toledo and Ironton Railroad in Ecorse Township, Wayne County, Michigan, the said location being wholly within and upon property owned by Ford, as shown on the said plat, "Exhibit B," attached hereto.

8. The estimated cost of the said measuring and regulator station, including the building to house the same, is as follows:

Material	\$25,600
Labor	13,300
Miscellaneous	5,300
Total	\$44,200

The said facility, when installed and operated, will constitute an integral part of Applicant's general gas plant in service. It is impracticable to attempt, here, to allocate fixed charges and operating expenses specifically attributable to such facility.

9. Delivery of gas by Applicant to Ford under the terms of the said contract is to be made at the outlet side of Applicant's said measuring and regulator station. The gas so purchased by Ford from Applicant is to be used by [fol. 558] Ford in connection with the fabrication and building of motor vehicles and related equipment at its River Rouge plant.

10. The construction of the proposed facility will be financed through the use of funds which Applicant has on hand and, if the certificate herein applied for is granted, Applicant is prepared to commence immediately the construction work, and it contemplates that it should be able to complete the facility and have it ready for operation within a period of approximately 30 days thereafter.

11. Applicant owns and controls, by virtue of producing acreage held by it and/or purchase contracts, reserves of gas adequate to supply the increased market requirements contemplated in connection with the proposed deliveries of gas to Ford under the said contract.

12. Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder, if the subject matter of this application is within the jurisdiction of the Commission.

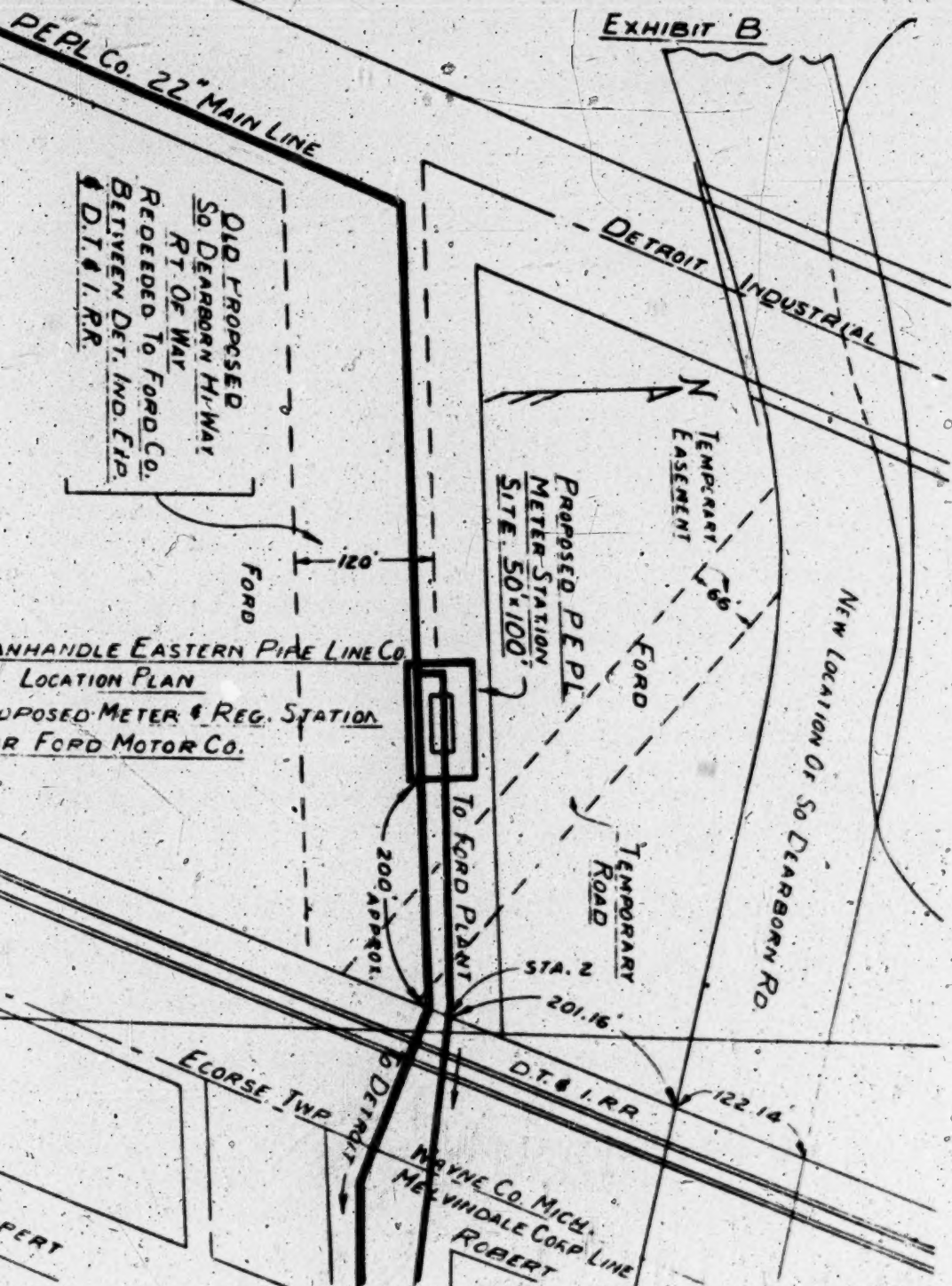
Wherefore, Applicant prays, in the alternative, that the Commission disclaim jurisdiction over the subject matter of the application herein for the reason that the same is excluded from the requirements of the provisions of the Natural Gas Act by Section 1(b) thereof; or, if the Commission rules that it has jurisdiction over the subject matter herein, that, subject to the reservation hereinabove made, the Commission issue to Applicant a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act, as amended, authorizing the construction [fol. 559] and operation of the proposed facility above described and such other and further authorization as may be required to enable it to make the physical connection, the deliveries and the rendition of the service and sale contemplated by the said contract with the Ford Motor Company.

(Duly signed and verified January 10, 1946.)

(Exhibit A, attached to this application, being the Contract dated August 20, 1945, between Panhandle Eastern Pipe Line Company and the Ford Motor Company, was attached to the Stipulation of Facts as Exhibit 3 and is printed in this Record in Volume I, page 14.)

(Here follows 1 Map, Exhibit B, folio 559a.)







[fol. 559b]

## Exhibit 10

Letter of Michigan Consolidated Gas Company, dated December 28, 1944, to Ford Motor Company and contract, effective May 9, 1945.

Ford Motor Company  
3674 Schaefer Road  
Dearborn, Michigan

Gentlemen:

This letter relates to a Contract For Large Volume Gas Service For All Purposes Except Space Heating or Large Volume Steam Generation (Interruptible Service) submitted for your consideration and enclosed with another letter of even date. The effective date indicated in this contract is May 9, 1945. This contract will supersede the Contract For Large Volume Gas Service—Interruptible Use, dated June 9, 1942, which is to be cancelled as of the effective date of the new contract.

If you are agreeable to such cancellation, this letter, and a copy thereof, should be signed in the space provided below by the proper officer of Ford Motor Company and returned to us for execution by an officer of this Company, and thereupon this letter shall constitute an agreement for the cancellation of said contract of June 9, 1942.

Michigan Consolidated Gas Company, By Hale A. Clark.

Agreed to: Ford Motor Company, By H. L. Moekle, Secretary. May 9, 1945.

Michigan Consolidated Gas Company, Henry Fink, Vice President. As of May 9, 1945.

[fol. 561] Contract Form No. 9      Contract No. AP-I-1  
Detroit District

Contract for Large Volume Gas Service for All Purposes  
Except Space Heating or Large Volume Steam Generation  
(Interruptible service)

For service under Rate Schedule No. 13

This agreement, entered into this 9th day of May 1945,  
between Michigan Consolidated Gas Company, of the City



of Detroit, Wayne County, Michigan (hereinafter called the "Company"), and Ford Motor Company located at (street and number) 3674 Schaefer Road in (city, village or township) the City of Dearborn, Wayne County, Michigan (hereinafter called the "Customer").

Witnesseth: That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

**Service to Which This Contract Applies**

Gas hereafter taken by the Customer from the Company for use in the premises located at (street and number) 3674 Schaefer Road in (city, village or township) the city of Dearborn, Wayne County, Michigan, shall be sold and delivered by the Company and shall be purchased and taken by the Customer under and in accordance with Company's Rate Schedule No. 13 entitled Large Volume Gas Service for All Purposes Except Space Heating or Large Volume Steam Generation (Interruptible Service).

The Customer agrees that no gas supplied by the Company under this contract will be used for space heating or for large volume steam generation.

The Customer further agrees that the quantity of gas required will not exceed an hourly rate of 6,250 therms and the requirements in any one day will not exceed 150,000 therms.

**Limitations of Use**

If in the judgment of the Company there is at any time and for any reason necessity for the curtailment or cessation of the gas hereunder, the Customer will, upon receipt from the Company directed to the Customer's Gas Dispatcher, its Coke Oven and Plant Engineering Departments of any notice given by telephone or other oral communication which shall be promptly confirmed by telegram to Customer's Gas Dispatcher, and the heads of its Coke Oven and Plant Engineering Departments, within six (6) hours curtail its use of gas hereunder to any extent that the Company may request in order to cope with contingencies which in the judgment of the Company justify curtailment or cessation of service to the Customer; and at each such time and in each such event the Company in order to accomplish the aforesaid purpose may diminish the delivery of gas to the Customer hereunder to the ex-

tent the Company deems necessary, or may entirely discontinue such delivery of gas if the Company deems such discontinuance necessary. Notification shall in each instance be given as soon as practicable after determination of necessity for curtailment. In each event of such curtailment or cessation of service hereunder, the Company [fol. 563] shall resume the rendering of full service hereunder as soon as the cause of contingency making such curtailment or cessation necessary has ceased to be operative.

Gas used hereunder shall be used only by equipments located within the geographically integrated premises indicated on Michigan Consolidated Gas Company Drawing No. A-11-1106, which premises are bounded by Schaefer Road, Airport Drive, Miller Road, Dix Road and the River Rouge. It shall not be used on equipment for space heating, large volume steam generation, or on equipment using gas at the Administration Building under Rate Schedule No. 3.

No gas supplied by the Company may be purchased under any other rate schedule during the period of this contract for use in the equipment specified in this contract.

The Customer agrees that during periods of curtailment or cessation which may be requested by the Company no operations performed by the equipment specified in this contract will be transferred to other equipment on which gas may be used under some other rate schedule.

#### Standby Facilities

Prior to the delivery of any gas under this contract, the Customer will provide, and the Customer agrees to continuously maintain during the period of this contract or any extension thereof, Standby Facilities and the fuel required for the operation thereof, of sufficient capacity to make possible the interruption of the natural gas supply contemplated in the foregoing paragraph—"Limitations of Use."

#### [fol. 564] Delivery and Measurement of Gas

The gas delivered to the Customer hereunder shall be by way of a service pipe connection to the distribution system of the Company. The location of this service pipe shall be as mutually agreed upon and shown on attached Drawing No. A-11-1106.

The gas delivered to the Customer hereunder shall be measured by a meter or meters which shall be located on the property of the *Company* at the point designated by the letter "A" on attached Drawing No. A-11-1106. All bills for gas used hereunder shall be calculated upon the basis of such measurement. The *Company* agrees that the Customer's duly authorized representative shall have access to the meter installation at all reasonable hours for the purpose of inspection or of routine maintenance of the meter installation.

The number of therms of gas delivered hereunder during any period shall be the product obtained by multiplying the average thermal content (number of British thermal units per cubic foot) of gas delivered, during such period, by one of the two following volumes, whichever is applicable: (a) the volume in cubic feet of gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of 14.65 pounds per square inch, if the pressure at which the gas is delivered to the Customer is in excess of the *Company's* standard delivery pressure as described hereafter under the heading "Pressure"; or, (b) the volume in cubic feet of gas at a temperature of sixty degrees (60°) Fahrenheit if the pressure at which the gas is delivered to the Customer is the *Company's* standard delivery pressure as described hereafter under the heading "Pressure"; and dividing the product so obtained by 100,000.

[fol. 565] The average thermal content of the gas delivered hereunder shall be determined by means of a recording calorimeter located at the gas plant of the *Company* in Melvindale, Michigan.

#### Point of Delivery

Gas under this contract is to be taken only at the locations designated herein for use on the Customer's premises at 3674 Schaefer Road in the City of Dearborn, Wayne County, Michigan, and its point of delivery shall be at the outlet of the meter located at point "A" shown on attached drawing No. A-11-1106.

#### Rate

All gas consumed during any one month will be billed at the following rates:



First 100,000 therms or less per month at 3.77c per therm

Next 400,000 therms per month at 3.111c per therm

All over 500,000 therms per months at 2.222c per therm

When gas is consumed for any reason, including a requirement by any governmental agency, contrary to the provisions of the paragraph above entitled, "Service to Which This Contract Applies", in addition to the amount billed at the foregoing commodity rate, the Customer will be billed each month for the twelve-month period immediately following any curtailment or cessation period an amount determined by multiplying such number of therms of gas as, on the day of maximum usage during such curtailment or cessation period, is used in excess of the number of therms permitted to be used by the Customer under the curtailment or cessation notice issued by the Company, [fol. 566] by 66.66 cents (subject to the provisions of the paragraph below entitled, "Discount"). For the purpose of arriving at the number of therms which the Customer uses under this Rate on the day of maximum use, daily readings of the meter or meters shall be taken at as nearly 24-hour intervals during such curtailment or cessation period as is practicable.

To avoid the cumulative effect which might be brought about by the use of gas during successive curtailment or cessation periods in any twelve-month period, the use on the single largest day which might otherwise be effective in any month will be the only volume to be used as the basis of computation.

#### Discount

A discount equal to 10 per cent of the above rates will be allowed on all bills paid on or before the final discount date stated on the bill.

#### Minimum Charge

The minimum amount payable hereunder during any calendar year shall be \$111,111.11 subject to a discount of 10 per cent if paid on or before the final discount date.

If service under this contract should originate after January 1st in any calendar year, or if for any reason other than default by the Customer, the service under this contract should be terminated before the expiration of the

calendar year, the minimum charge for that year shall be at the rate of one-twelfth of \$111,111.11 for each month that the contract is in effect during that year, subject to a discount of 10 percent if paid on or before the final discount date.

#### [fol. 567] Monthly Bills

As soon as practicable after the end of each month, the Company shall render a bill to the Customer for the amount due hereunder for such month. A "Month" under this contract shall mean the period between any two consecutive regular readings of the meter(s) by the Company, such readings to be taken, as nearly as may be practicable every thirty (30) days.

The Company will endeavor to render bills approximately ten (10) days prior to the final discount dates stated on the bills.

#### Period of Contract

Subject to approval by the President or a Vice President of the Company this contract shall become effective on May 9, 1945, and shall continue in effect for a period of one (1) year from said date and from year to year thereafter, subject to the right of either party to terminate the same at the end of said period or of any yearly extension thereof, by written notice to the other party given not less than thirty (30) days prior to the date of such intended termination.

#### Quality of Gas

The gas supplied under this contract shall be commercially pure natural gas mixed with such quantities of manufactured gas as the Company may from time to time elect, except in emergency when manufactured gas may be supplied.

#### Pressure

The Standard Pressure of gas supplied by the Company shall be approximately six inches (6") water column.

[fol. 568] -The Company shall not be required to supply gas at pressures in excess of fifty (50#) pounds per square

inch at the Point of Delivery, designated by the letter "A" on attached Drawing No. A-11-1106.

### Contingencies

In case the Customer fails to accept delivery of gas by reason of war, conversion of the Customer's River Rouge plant at 3674 Schaefer Road in the City of Dearborn, Michigan from war time to peace time activities for a single continuous period not exceeding 6 months, strikes, explosions, fires, accidents or other reasonably unavoidable causes, the minimum charge shall be abated in the proportion that the aggregate of the periods during which gas is not used for the reasons above mentioned bears to one year.

Failure to deliver or accept deliveries of said gas as herein provided, shall not subject either party to liability, if such failure is due to war, strikes, explosions, fires, accidents or other reasonably unavoidable causes.

### Rules and Regulations

Service under this contract shall be subject to the applicable Rules and Regulations of the Company, as filed with the Michigan Public Service Commission.

In the event the applicable Rules and Regulations, at any time, be changed in such manner as may at the time be lawful, the new Rules and Regulations shall be substituted for those Rules and Regulations theretofore effective; and if any such change or changes in the Rules and Regulations materially affect this contract, the Customer may elect to cancel this contract within thirty (30) days after written notice by the Company of such change or changes in the Rules and Regulations.

[fol. 569] Should the rates specified herein at any time be increased or decreased in such manner as may at the time be lawful, the increased or decreased rates shall be substituted for the rates stipulated in this contract, and if any such increase or decrease in the rates materially affects this contract the Customer may elect to cancel this contract within thirty (30) days after written notice by the Company of such increase or decrease in the rates.



**Agents Cannot Modify**

No agent of the Company shall have the power to amend, modify, alter or waive any of the conditions hereof except upon the approval of the President or a Vice-President of the Company, or to bind the Company by making any promise or representation contrary to or inconsistent with the provisions hereof.

The obligations under this contract shall be binding upon, and all rights created hereunder shall inure to the benefit of, the parties hereto, and their successors or heirs, and assigns.

This contract shall not be effective unless approved by the President or a Vice-President of the Company.

(Duly signed by respective parties.)

(Here follows 1 drawing, folio 570)

3 SERVICE ENTRIES NO GAS UNDER  
RATE SCHEDULE NO 3

ADMINISTRATION BUILDING  
3674 SCHAEFER RD

GAS USED IN THIS BUILDING IS EXEMPTED FROM THE  
PROVISIONS OF CONTRACT NO. AP-1-1 DATED

# FORD MOTOR COMPANY RIVER ROUGE PLANT

ANY EQUIPMENT USING GAS IN THIS PLANT MAY BE SUPPLIED  
UNDER PROVISIONS OF CONTRACT NO. AP-1-1 DATED  
EXCEPT EQUIPMENT FOR SPACE HEATING FOR LARGE VOLUME  
STEAM GENERATION OR SUCH AS USES GAS IN THE  
ADMINISTRATION BUILDING UNDER RATE SCHEDULE NO 3.

DRIFTE METERS  
POINT A

RIVER CROSSING

MICHIGAN CONSOLIDATED  
GAS COMPANY  
RIVER ROUGE PROPERTY

GATE II

12 SERVICE ENTRIES PROPERTY OF FORD MOTOR CO.

22 NATURAL GAS LINE

RIVER ROUGE

NOTE: POINT OF DELIVERY OF GAS SHALL BE AT THE OUTLET OF THE METERS LOCATED AT POINT A  
AS REFERRED TO IN CONTRACT NO. AP-1-1 DATED

DRAWING A-11-1106

IS A PART OF CONTRACT NO. AP-1-1

DATED

BETWEEN

THE MICHIGAN CONSOLIDATED GAS COMPANY

AND

THE FORD MOTOR CO.

DRAWING A-11-1106 IS APPROVED

FOR MICHIGAN CONSOLIDATED GAS COMPANY

by *W. A. C. C.*  
INDUSTRIAL ENGINEER

FOR FORD MOTOR COMPANY

MICHIGAN CONSOLIDATED GAS COMPANY -  
DRAWING NO. A-11-1106

DRAWN BY *W. A. C. C.*  
CHECKED BY

570





[fol. 571]

## Exhibit 11

Agreement Between Panhandle Eastern Pipe Line Company and the Albion Gas Light Company, Dated March 30, 1944

## Agreement

This agreement, made and entered into this 30th day of March, 1944, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, with a principal office at Kansas City, Missouri, hereinafter called "Panhandle Eastern," and The Albion Gas Light Company, a Michigan corporation, hereinafter called "Albion":

On December 30, 1943, Panhandle Eastern, being the owner of an integrated interstate natural gas pipe line system, entered into a contract with Albion Malleable Iron Company, a Michigan corporation, hereinafter called "Malleable," under the terms of which Panhandle Eastern agreed to sell and deliver and Malleable agreed to purchase and receive natural gas for a portion of the fuel requirements of Malleable, in its manufacturing plant located in Albion, Michigan, for the production of malleable iron castings. For the purpose of transporting and delivering such natural gas to Malleable, Panhandle Eastern further agreed under the terms of said contract to construct, own and operate approximately Fourteen Thousand Three Hundred (14,300) Feet of three-inch pipe from a point on its Michigan twelve-inch West line to a point outside the city limits of Albion, Michigan west of Malleable's plant and at that point to construct a meter and regulator station through which said natural gas was to be metered and delivered to Malleable. Under said contract Malleable has agreed to construct, own and operate approximately Three Thousand Three Hundred Seventy-two (3,372) Feet of three-inch gas pipe line from said meter and regulator station to a point on its plant site within the City of Albion, Michigan, and to purchase natural gas at the outlet side of Panhandle Eastern's meter and regulator station and to pay Panhandle Eastern therefor the sum of 3.55 cents per therm for all gas delivered thereunder. Both Malleable and Panhandle Eastern have applied to the War Production Board for the

necessary authorizations to receive the pipe necessary for the aforesaid construction but to this date neither company has received such authorization.

Malleable, as an agent of Defense Plant Corporation, is engaged in the process of expanding its plant facilities for the purpose of manufacturing large quantities of malleable iron castings, to be used in amphibious landing craft, Army trucks, tanks and other war equipment. The additional production facilities under construction by Malleable are designed for the use of natural gas as fuel and a part of said facilities will be completed and ready for use on or about March 20, 1944. U. S. Ordnance is insisting that Malleable have natural gas available so that no delay will be encountered in the production schedule set up by the Army for such malleable parts.

Albion is a public utility in the State of Michigan, operating subject to and under certificate of public convenience and necessity from the Public Service Commission of the State of Michigan in supplying a mixture of manufactured and natural gas under franchise to various consumers within the city of Albion through its gas distribution system located therein. It purchases natural gas for [fol. 573] mixing purposes from Panhandle Eastern at the latter's meter and regulator station located outside the southern city limits of the City of Albion. Panhandle Eastern transports such natural gas to that point through approximately two (2) miles of two-inch pipe line extending to its twelve-inch Michigan West line. Through the use of distribution facilities now owned and operated by Albion within the City of Albion and through the addition thereto of approximately Nineteen Hundred (1900) Feet of six-inch gas pipe line Albion can receive the quantities of natural gas (to be delivered by Panhandle Eastern to Malleable under said contract of December 30, 1943) at the outlet side of the meter and regulator station located at the terminus of Panhandle Eastern's two-inch Albion lateral line and then transport such quantities of natural gas at high pressures through a part of the City of Albion to the plant site of Malleable without commingling said quantities of natural gas with the mixed gas being used by Albion for distribution to its customers within the City of Albion. Because of the fact that all but Nineteen Hun-

dred (1900) Feet of the facilities necessary for such transportation are presently in existence and operation and because of the fact that the additional required facilities constitute less than one-third of the facilities required by Panhandle Eastern and Malleable for the construction of the three-inch line hereinabove described, it is believed by the parties hereto that the Nineteen Hundred (1900) Feet of six-inch pipe can be obtained and constructed by Albion without further delay to the end that natural gas can be made available to Malleable in time for Malleable to meet said production schedules.

Albion represents that its main office is located in the City of Albion, Michigan and that it there has the necessary management, personnel, service, trucks, facilities and equipment to properly make the aforesaid additions to its distribution system and to transport and deliver the aforesaid quantities of Panhandle Eastern's gas. Albion has expressed its willingness to cooperate with Panhandle Eastern and Malleable by making available for the services herein contracted for the aforesaid management, personnel, trucks, facilities and equipment.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, Panhandle Eastern and Albion covenant and agree as follows:

1. Albion agrees immediately to proceed with diligence to obtain said additional Nineteen Hundred (1900) Feet of six-inch pipe and to construct the same in such a manner that its facilities will be capable of transporting for Panhandle Eastern the quantities of natural gas required by Malleable under the terms of said contract of December 30, 1943, without any commingling of the mixed gas used in Albion's distribution system with Panhandle Eastern's gas so transported.

Albion further agrees that the terminus of said additional pipe line shall be at a point on the plant site of Malleable, to be mutually agreed upon by Panhandle Eastern and Malleable, at which point Albion will construct, own and operate metering facilities of suitable type and design to measure the quantities of gas so transported.

2. Upon the completion of Albion's additional facilities above described and upon the completion of Malleable's



additional production facilities to the extent that Malleable is ready to receive natural gas from Panhandle East- [fol. 575] ern in accordance with said contract of December 30, 1943, Albion agrees to receive at the outlet side of Panhandle Eastern's town border station the quantities of natural gas required by Malleable under said contract of December 30, 1943, to transport said gas for Panhandle Eastern through the aforesaid facilities of Albion, without such reduction in pressure as will interfere with or restrict the flow of gas to Malleable at such pressure and in such volume as is required by it, without commingling the same with mixed gas used in Albion's distribution system and without treating or changing the constituency thereof, and to deliver said quantities of Panhandle Eastern gas to Malleable for the account of Panhandle Eastern at the outlet side of Albion's measuring facilities to be located on Malleable's plant site.

2-A. Panhandle Eastern agrees that it will deliver the gas to Albion, for transportation to Malleable, at the outlet side of said town border station at a pressure not under thirty-five (35#) pounds per square inch gauge and not to exceed fifty (50#) pounds per square inch gauge.

3. The quantities of Panhandle Eastern's gas transported hereunder by Albion, and delivered to Malleable for the account of Panhandle Eastern, shall be deemed to be those quantities of gas recorded by Albion's metering equipment at Malleable's plant site. In consideration of such transportation through the use of all of Albion's said personnel, facilities and equipment, of Albion's assumption of all loss of Panhandle Eastern gas caused by ordinary leakage while in Albion's possession, and of Albion's delivery of said gas for Panhandle Eastern's account, Panhandle Eastern agrees to pay Albion .45 cent per therm.

[fol. 576] 4. Albion agrees to install, own and operate at the terminus of its additional six-inch line, metering equipment of standard type and design suitable for the measurement of the quantities of Panhandle Eastern's gas to be delivered by Albion for the account of Panhandle Eastern and the basis and manner of measurement thereof shall be identical with paragraphs 7, 8 and 9 of Panhandle Eastern's standard form of industrial gas contract, a copy

of which blank form of contract is attached hereto for reference to said paragraphs.

Albion further agrees to permit Panhandle Eastern and Malleable to verify the accuracy of said measuring equipment at reasonable intervals upon notice to Albion and agrees to accord Panhandle Eastern and Albion the right and privilege of being present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with said measuring equipment. Panhandle Eastern and Malleable also shall have the right and privilege to obtain meter charts from Albion for the purpose of inspection.

If upon test said measuring equipment is found to be not more than two per cent (2%) fast or slow, previous recordings of such equipment shall be considered correct in computing the quantities of gas delivered to Malleable for the account of Panhandle Eastern, but such equipment shall be adjusted properly at once to record accurately. If upon test such measuring equipment is found to be inaccurate by an amount exceeding two per cent (2%) at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely, or agreed upon, but in case the period is not known, or agreed upon, such correction shall be for a period extending over one-half, of the time elapsed since the date of last test, not exceeding a correction period of thirty (30) days.

5. All of Panhandle Eastern's gas transported by Albion hereunder and delivered to Malleable for the account of Panhandle Eastern is intended solely for use as industrial fuel in Malleable's plant and shall not be diverted or sold by Albion.

6. It is understood that the title to all gas so transported and delivered hereunder shall remain in Panhandle Eastern until actually delivered for its account to Malleable but that Albion agrees to be responsible for and to indemnify Panhandle Eastern and hold it harmless against any damages or injuries caused thereby and any claims for such damages or injuries while in the possession of Albion; provided, however, that Albion shall not be liable

to Panhandle Eastern for quantities of gas which may be lost by reason of explosion or other occurrence beyond the reasonable control of Albion.

7. The term of this contract shall coincide with Panhandle Eastern's contract of December 30, 1943 with Malleable, namely, three years, commencing with the date of first delivery of gas to Malleable thereunder and with any extension of said term.

8. Neither party shall be liable to the other for failure of performance due to causes beyond its control and which by the exercise of due diligence such party is able to prevent or overcome.

9. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto and shall inure to the benefit of and be binding upon the parties [fol. 578] ties hereto, their respective successors and assigns, provided, however, that neither party shall assign this contract without the prior written consent of the other.

If, by reason of the subject matter of this agreement, but only after diligent defense, Albion should be subjected to State or Federal regulation to which it is not now subject and which it considers detrimental to its interests, or should the sale of gas by Panhandle Eastern to Malleable, herein referred to, finally be held to be subject to regulation which is of financial detriment to Panhandle Eastern, Panhandle Eastern will (with Malleable's consent) sell gas to Albion for resale to Malleable for the remaining term of its contract with Malleable, or any extension thereof, at a price at least .45c per therm less than Albion's price to Malleable.

10. It is mutually agreed by the parties hereto that the contractual relationship of Albion to Panhandle Eastern is that of an independent contractor under the terms of this contract; that Albion is not and in no manner shall hold itself out as an agent of Panhandle Eastern; and that in performing its obligations under this contract it shall use its own means, methods, instrumentalities and employees without control or direction on the part of Panhandle Eastern.

In witness whereof, the final execution of this agreement



has been effected at Kansas City, Missouri the day and year first above written.

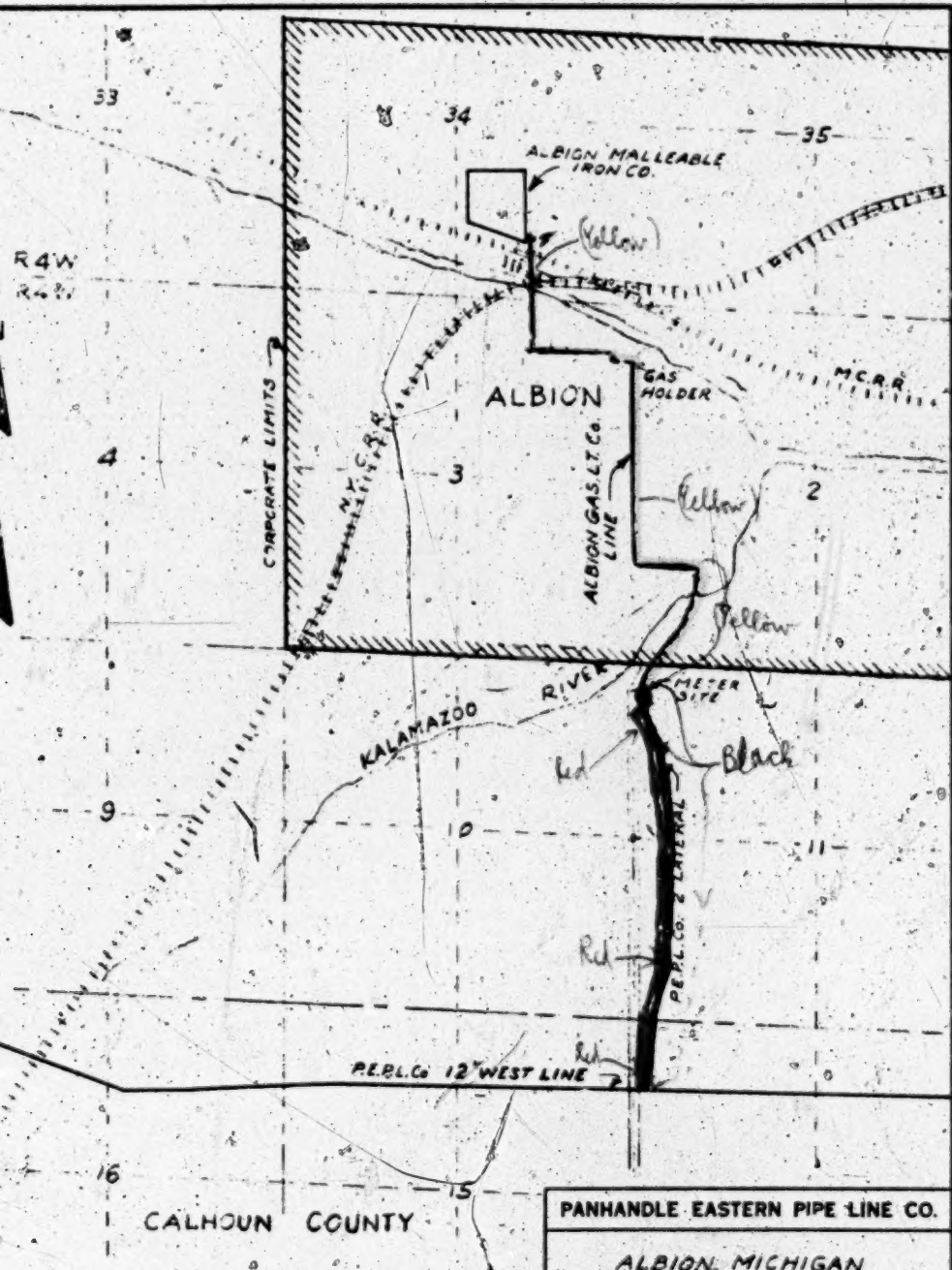
(Duly signed by respective parties.)

**Exhibit 12**

**Map Showing Service Lines to Albion Gas Light Company  
and Albion Malleable Iron Company**

(Here follows 1 map, folio 578a.)

436A



bit 12 attached to Stipulation of  
Facts - File D 3335

PANHANDLE EASTERN PIPE LINE CO.

ALBION, MICHIGAN  
AND VICINITY

DATE 2-12-46	SCALE 1" = 2000'
DRAWN BY F. B.	APPROVED
CHECKED BY	BOOK NO.
APPROVED	DRWG. NO.

578a





[fol. 579]

## Exhibit 13

Letters of Michigan Consolidated Gas Company to Ford Motor Company Dated October 30, 1945, re Cancellation of Contract of May 9, 1945, and Proposed New Contract

October 30, 1945

Ford Motor Company, 3674 Schaefer Road, Dearborn,  
Michigan

Gentlemen:

With this letter we are putting into your hands two copies of the following documents:

Contract For Large-Volume Gas Service For All Purposes (Interruptible Service);

A letter covering the cancellation of the Contract For Large Volume Gas Service For All Purposes Except Space Heating or Large Volume Steam Generation (Interruptible Service), dated May 9th, 1945.

If the terms of these documents are acceptable to you, both copies of each document should be signed by the appropriate officer of your Company and thereupon returned to us. Upon our receipt of the signed copies of contract and cancellation letter, we will submit the contract to the Michigan Public Service Commission for approval of its provisions, and having received such approval the signature of an officer of our Company will be affixed and a [fol. 580] copy of the two documents returned to your files.

Yours very truly, Michigan Consolidated Gas Company, Hale A. Clark, Industrial Engineer.

HAC:GEG

Note:—This letter, with the documents referred to in it, delivered by Mr. Clark to Mr. Ormond 11-5-45.

Ford Motor Company, 3674 Schaefer Road, Dearborn,  
Michigan

Gentlemen:

This letter relates to a Contract For Large-Volume Gas Service For All Purposes (Interruptible Service) sub-

mitted for your consideration and enclosed with another letter of even date. The effective date indicated in this contract is

This contract will supersede the Contract For Large Volume Gas Service For All Purposes Except Space Heating Or Large Volume Steam Generation (Interruptible Service), dated May 9th, 1945, which is to be cancelled as of the effective date of the new contract.

If you are agreeable to such cancellation, this letter, and a copy thereof, should be signed in the space provided below by the proper officer of Ford Motor Company and return to us for execution by an officer of this Company, and thereupon this letter shall constitute an agreement for [fol. 581] the cancellation of said contract of May 9th, 1945.

Michigan Consolidated Gas Company, By Hale A. Clark.

Agreed to:—Ford Motor Company, By —, —, (Official Title), —, (Date).

Michigan Consolidated Gas Company, —, Vice-President, —, 194—.

[fol. 582]

Contract No. —

Contract for Large-Volume Gas Service for All Purposes (Interruptible Service)

This agreement, entered into this — day of —, 194—, between Michigan Consolidated Gas Company, of the City of Detroit, Wayne County, Michigan (hereinafter called the "Company"), and Ford Motor Company, located at 3674 Schaefer Road in the City of Dearborn, Wayne County, Michigan (hereinafter called the "Customer"),

Witneseth: That for and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

Service to Which This Contract Applies

Gas hereafter taken by the Customer from the Company for use in the premises located at 3674 Schaefer Road in the City of Dearborn, Wayne County, Michigan, shall be sold and delivered by the Company and shall be purchased



and taken by the Customer under and in accordance with the provisions hereinafter set forth.

The Customer agrees that the quantity of gas required will not exceed an hourly rate of 25,000 therms and the requirements in any one day will not exceed 500,000 therms.

**Limitations of Use**

If in the judgment of the Company there is at any time and for any reason necessity for the curtailment or cessation [fol. 583] of the use of gas hereunder, the Customer will, upon receipt from the Company directed to the Customer's Gas Dispatcher, its Coke Oven and Plant Engineering Departments, of any notice given by telephone or other oral communication which shall be promptly confirmed by telegram to Customer's Gas Dispatcher, and the heads of its Coke Oven and Plant Engineering Departments, within six (6) hours curtail its use of gas hereunder to any extent that the Company may request in order to cope with contingencies which in the judgment of the Company justify curtailment or cessation of service to the Customer; and at each such time and in each such event the Company in order to accomplish the aforesaid purpose may diminish the delivery of gas to the Customer hereunder to the extent the Company deems necessary, or may entirely discontinue such delivery of gas if the Company deems such discontinuance necessary. Notification shall in each instance be given as soon as practicable after determination of necessity for curtailment. In each event of such curtailment or cessation of service hereunder, the Company shall resume the rendering of full service hereunder as soon as the cause of contingency making such curtailment or cessation necessary has ceased to be operative.

Gas used hereunder shall be used only by equipments located within the geographically integrated premises indicated on Michigan Consolidated Gas Company Drawing No. A-11-1248, which premises are bounded by Schaefer Road, Airport Drive, Miller Road, Dix Road, and the River Rouge. It shall not be used on equipment using gas at the Administration Building under Rate Schedule No. 3.

**[fol. 584] Delivery and Measurement of Gas**

The gas delivered to the Customer hereunder shall be by way of a service pipe connection to the distribution system of the Company. The location of this service pipe

shall be as mutually agreed upon and shown on attached Drawing No. A-11-1248.

The gas delivered to the Customer hereunder shall be measured by a meter or meters which shall be located on the property of the Company at the point designated by the letter "A" on attached Drawing No. A-11-1248. All bills for gas used hereunder shall be calculated upon the basis of such measurement. The Company agrees that the Customer's duly authorized representative shall have access to the meter installation at all reasonable hours for the purpose of inspection of the meter installation.

The number of therms of gas delivered hereunder during any period shall be the product obtained by multiplying the average thermal content (number of British thermal units per cubic foot) of gas delivered, during such period, by one of the two following volumes, whichever is applicable: (a) the volume in cubic feet of gas at a temperature of sixty degrees (60°) Fahrenheit and an absolute pressure of 14.65 pounds per square inch, if the pressure at which the gas is delivered to the Customer is in excess of the Company's standard delivery pressure as described hereafter under the heading "Pressure": or, (b) the volume in cubic feet of gas at a temperature of sixty degrees (60°) Fahrenheit if the pressure at which the gas is delivered to the Customer is the Company's standard delivery pressure as described hereafter under the heading "Pressure"; and dividing the product so obtained by 100,000.

[fol. 585] The average thermal content of the gas delivered hereunder shall be determined by means of a recording calorimeter located at the gas plant of the Company, in Melvindale, Michigan.

#### Point of Delivery

Gas under this contract is to be taken only at the locations designated herein for use on the Customer's premises at 3674 Schaefer Road in the City of Dearborn, Wayne County, Michigan, and its Point of Delivery shall be at the outlet of the meter located at Point "A" shown on attached Drawing No. A-11-1248.

### Rate Schedule

All gas consumed during any one month will be billed at the following rates:

First 100,000 therms or less per month at 3.777c per therm

Next 400,000 therms per month at 3.111c per therm

All Over 500,000 therms per month at 2.222c per therm

### Discount

A discount equal to 10 per cent of the above rates will be allowed on all bills paid on or before the final discount date stated on the bill.

### Monthly Bills

As soon as practicable after the end of each month, the Company shall render a bill to the Customer for the amount due hereunder for such month. A "Month" under this contract shall mean the period between any two consecutive regular readings of the meters by the Company, such readings to be taken, as nearly as may be practicable, every thirty (30) days.

The Company will endeavor to render bills approximately ten (10) days prior to the final discount dates stated on the bills.

### Period of Contract

Subject to approval by the President or a Vice-President of the Company this contract shall become effective on \_\_\_\_\_, 194\_\_\_\_, and shall continue in effect for a period of one (1) year from said date and from year to year thereafter, subject to the right of either party to terminate the same at the end of said period or of any yearly extension thereof, by written notice to the other party given not less than thirty (30) days prior to the date of such intended termination.

### Quality of Gas

The gas supplied under this contract shall be commercially pure natural gas mixed with such quantities of manufactured gas as the Company may from time to time elect,



except in emergency when manufactured gas may be supplied.

#### Pressure

The Standard Pressure of gas supplied by the Company shall be approximately six inches (6") water column.

The Company shall not be required to supply gas at pressures in excess of ninety (90#) pounds per square inch at the Point of Delivery, designated by the letter "A" on attached Drawing No. A-11-1248.

#### [fol. 587] Contingencies

Failure to deliver or accept deliveries of said gas as herein provided, shall not subject either party to liability, if such failure is due to war, strikes, explosions, fires, accidents or other reasonably unavoidable causes.

#### Rules and Regulations

Service under this contract shall be subject to the applicable Rules and Regulations of the Company, as filed with the Michigan Public Service Commission.

In the event the applicable Rules and Regulations, at any time, be changed in such manner as may at the time be lawful, the new Rules and Regulations shall be substituted for those Rules and Regulations theretofore effective; and if any such change or changes in the Rules and Regulations materially affect this contract, the Customer may elect to cancel this contract within thirty (30) days after written notice by the Company of such change or changes in the Rules and Regulations.

Should the rates specified herein at any time be increased or decreased in such manner as may at the time be lawful, the increased or decreased rates shall be substituted for the rates stipulated in this contract, and if any such increase or decrease in the rates materially affects this contract the Customer may elect to cancel this contract within thirty (30) days after written notice by the Company of such increase or decrease in the rates.

#### Agents Cannot Modify

No agent of the Company shall have the power to amend, modify, alter or waive any of the conditions hereof except

upon the approval of the President or a Vice-President [fol. 588] of the Company, or to bind the Company by making any promise or representation contrary to or inconsistent with the provisions hereof.

The obligations under this contract shall be binding upon and all rights created hereunder shall inure to the benefit of, the parties hereto, and their successors or heirs, and assigns.

This contract shall not be effective unless approved by the President or a Vice-President of the Company.

See drawing No. A-11-1248

(opposite page)

**Exhibit 14**

Map Dated January 15, 1946, Showing Ford Motor Company 18-inch Natural Gas Supply Main from Panhandle Main to Tool and Die Shop

(See opposite page)

**Exhibit 15**

Map Dated January 23, 1946, Showing Ford Motor Company Main Plant Gas Lines

(see opposite page)

(Here follows 3 photos, folios 588a, 588b, 588c.)

See Card 9 for folios  
588a(p.444A), 588b (p.444B),  
and 588c (p. 444c).







[fol. 589]

## Exhibit 16

Comparative computation of cost of gas to Ford Motor Company

Ford-Panhandle Contract

vs.

Ford-M. C. G. Co. Contract

Cost of Gas—Assuming Usage 25,000 MCF 5 days per week, only—  
holidays not deducted
$$\begin{array}{r} 25,000 \text{ MCF} \times 5 \text{ days} \\ \times 52 \text{ weeks} \\ + 12 \end{array}$$

$$\begin{array}{r} 125,000 \text{ MCF /Week} \\ 6,500,000 \text{ " /Year} \\ 541,700 \text{ " /Month} \end{array}$$

At Ford-Gas Co. Contract			5,417,000 Therms/Month
1st	100,000 Therms @	3.777¢	\$ 3,777
Next	400,000 " @	3.111	12,444
	4,917,000 " @	2.222	109,256
			125,477
Less 10%			12,548
5,417,000 Therms @ 2.085			\$112,929

## At Ford-Panhandle Contract

25,000 MCF—	1 × 3.2	3.2	
	1 × 3.0	3.0	
	3 × 2.7	8.1	
	5 × 2.6	13.0	
	8 × 2.2	17.6	
	7 × 2.1	14.7	
	25	59.6	\$5,960



[fol. 590]

**Ford-Panhandle**

Per Week—5 days @ 25,000 MCF @ \$5.960	\$29,800
125,000 MCF per Week @ 2.384¢ per Therm =	\$29,800

Ford-Panhandle Contract	2.384¢
Ford-Gas Co. Contract	2.085

.299¢

Panhandle Rate is 14% higher than Gas Company Rate.

On 65,000,000 Therms per Year, Ford pays Panhandle \$194,350 per year more than to Gas Company

Michigan Consolidated Gas Company  
 Detroit District  
 Industrial Department  
 February 8, 1946

**Exhibit 17**

Comparative computation of cost of gas to Ford Motor Company  
 (alternative computation)

**Ford-Panhandle Contract**

vs.

**Ford-M. C. G. Co. Contract**

Cost of Gas—Assuming Usage 25,000 MCF 5 days per week and 15,000 MCF  
 2 days per week—holidays not deducted

25,000 MCF × 5 days	125,000 MCF
15,000 " × 2 days	30,000 "
	<hr/>
	155,000 MCF/Week
× 52 weeks	8,060,000 " /Year
+ 12	671,700 " /Month

[fol. 591]

## At Ford-Gas Co. Contract

6,717,000 Therms/Month

1st	100,000 Therms @	3.777¢	\$ 3,777
Next	400,000 "	@ 3.111	12,444
	6,217,000 "	@ 2.222	138,141

154,362

Less 10%

15,436

6,717,000 Therms @ 2.068

\$138,926

## At Ford-Panhandle Contract

25,000 MCF—	1 × 3.2	3.2	
	1 × 3.0	3.0	
	3 × 2.7	8.1	
	5 × 2.6	13.0	
	8 × 2.2	17.6	
	7 × 2.1	14.7	
	25	59.6	\$5,960
15,000 MCF—	1 × 3.2	3.2	
	1 × 3.0	3.0	
	3 × 2.7	8.1	
	5 × 2.6	13.0	
	5 × 2.2	11.0	
	15	38.3	\$3,830

## Ford-Panhandle

Per Week—5 days @ 25,000 MCF @	\$5,960	\$29,800
2 days @ 15,000 MCF @	3,830	7,660

155,000 MCF/Week @ 2.417¢ per Therm =	\$37,460
---------------------------------------	----------

Ford-Panhandle Contract	2.417¢
Ford-Gas Co. Contract	2.068

349¢

Panhandle Rate is 17% higher than Gas Company Rate.

[fol. 592] On 80,604,000 Therms per Year, Ford pays Panhandle \$281,308 per year more than to Gas Company Michigan Consolidated Gas Company, Detroit District

Industrial Department — 2-8-46

Exhibit 18—Page 1

Letter of Michigan Consolidated Gas Company to E. Buddrus, president of Panhandle Eastern Pipe Line Company, dated December 14, 1945, re applications for gas under rate schedule Rd-2.

December 14, 1945

Dear Mr. Buddrus:

This is to acknowledge receipt of your letter of December 8 in reference to the nine applications we placed with your Company, four dated November 16, and five dated November 17, 1945, for the purchase of natural gas on an interruptible basis under your Rate Schedule Rd-2, and to give you the further information and clarification which you have requested.

In reference to the information called for in paragraph 2 of your letter, please be advised that customers covered by our applications Nos. 1 to 5, both inclusive, are customers whose requirements of natural gas we have supplied for many years. We have heretofore purchased their requirements from your Company on a firm basis and now desire to purchase such requirements on an interruptible basis, under the terms and conditions prescribed in Rate Schedule Rd-2. As stated in the applications, we have, in each case, contracts with the customers providing for in-[fol. 593] terruption or curtailment of supply. We have given you, in each case, the present or estimated monthly or maximum daily requirements and also the point at which we wish delivery made. We now request your commitment on each of these applications in the order numbered, upon receipt of which, we will be pleased to furnish you with the information required by the last paragraph of "Special Provision" (c) Rate Schedule Rd-2, namely, the name and location of the customers and a description of the purpose or purposes for which the gas is to be utilized.

Customers covered by applications Nos. 6 to 9, both inclusive, are new customers or, old customers to be served



at new locations. Supply to them is contracted to start within the next three months. Full information called for in paragraph 6, under "Special Provisions" of Rate Schedule Rd-2, is given in each application and we request in these cases also your commitment and we will supply the information on name, location and utilization of gas immediately upon receipt of such commitment.

Very truly yours, Henry Fink, Vice President & General Manager.

[fol. 594]

Exhibit 18—Page 2

Letter of Mr. Buddrus to Mr. Fink, president of Michigan Consolidated Gas Company, dated December 8, 1945, re applications for gas.

December 8, 1945

Dear Mr. Fink:

We acknowledge the receipt of nine letters signed by you (four being dated November 16, 1945, and five being dated November 17, 1945), each of which purports to be a separate application for the purchase of gas on an interruptible basis under our Rate Schedule Rd-2. The aggregate of the stated maximum daily gas requirements to be served amounts to 517,000 therms or approximately 51 million cubic feet.

Viewing the very large quantity involved in the light of your testimony before the Federal Power Commission recently to the effect that Michigan Consolidated Gas Company is not interested in obtaining any additional commitments from this company for natural gas in the Detroit area, we assume that these nine letters refer to requirements which you have heretofore purchased from us on a firm basis and now desire to purchase on an interruptible basis. We shall appreciate it if you will either confirm our assumption or clarify this aspect of your requests.

In this connection, we call your attention to the election which you are required to make under the provisions of sub-paragraph (b) of the section entitled "Applicable" of our Rate Schedule Rd-2, First Revised Sheet No. 8, and we ask that you let us have the names and addresses of all [fol. 595] of your customers being supplied with natural gas purchased from us whose present, or estimated, an-

nual use of gas exceeds 1,200,000 therms, stating, with respect to each, your election.

Very truly yours, E. Buddrus.

EB:vn

**Exhibit 18—Page 3**

Letter of Mr. Fink to Panhandle Eastern Pipe Line Company, attention of Mr. Buddrus, dated December 5, 1945, re applications for gas.

December 5, 1945

Gentlemen:

Under date of November 16, 1945, Michigan Consolidated Gas Company submitted to you by mail nine (9) applications for the purchase of gas, effective on or before December 1, 1945, for resale on an interruptible basis to industrial customers. To date we have not been favored with a reply to these applications.

In view of the importance of early disposition of the matters involved, we would appreciate your reply without further delay.

Yours very truly, Henry Fink, Vice President & General Manager.

vh

[fol. 596]

**Exhibit 18—Page 4**

Application No. 1 for gas under rate schedule Rd-2, dated November 16, 1945

November 16, 1945

Panhandle Eastern Pipe Line Company, 1221 Baltimore Avenue, Kansas City, Missouri

Attention: Mr. E. Buddrus, President

Gentlemen:

We hereby make application for the purchase of gas, effective on or before December 1, 1945, under Rate Schedule Rd-2, for resale on an interruptible basis to an industrial customer whose supply has not been previously purchased under that schedule, and render you the following information in conformity with the requirements of that Schedule.

(1) We wish to receive this increased commitment at our Melvindale, Michigan receiving station.

(2) We estimate the monthly and maximum daily gas requirements of the plant to be served as follows:

6,000 therms max. day  
150,000 therms per month  
1,800,000 therms per year

(3) The customer will be supplied under a contract providing for curtailment or interruption of supply, in accordance with the provisions of Rate Schedule Rd-2.

We would appreciate your prompt approval of this application.

Very truly yours, Henry Fink, Vice President & General Manager.

vh

Exhibit 18, pages 5 to 12, consists of Applications Nos. 2-9 inclusive, identical in all respects with Application No. 1, except that the estimated yearly, monthly and maximum daily gas requirements of the plants to be served are in varying amounts, as follows (expressed in therms):

Application No.	Maximum Day	Month	Year
2	15,000	350,000	4,200,000
3	8,000	120,000	1,440,000
4	250,000	4,700,000	56,400,000
5	120,000	1,200,000	14,400,000
6	30,000	650,000	7,800,000
7	20,000	250,000	3,000,000
8	20,000	150,000	1,800,000
9	50,000	900,000	10,800,000

[fol. 598]

Exhibit 18—Page 13

Letter of Panhandle Eastern Pipe Line Company to Michigan Consolidated Gas Company dated February 14, 1946; re applications for gas.

February 14, 1946

Michigan Consolidated Gas Company, 415 Clifford Street, Detroit 2, Michigan

Dear Sirs:

In several letters, you have heretofore requested this Company to sell you gas under our Rate Schedule Rd-2 for resale on an interruptible basis.



As you are, presumably, aware, the issue was raised in consolidated Dockets G-661 and G-688 by counsel for the Federal Power Commission, in connection with our existing contract with the Ford Motor Company, as to whether Panhandle Eastern Pipe Line Company can transport any additional gas in interstate commerce without first obtaining a certificate of public convenience and necessity so to do. It will be necessary to obtain a clarification of the law on this question before we are free to make a direct reply or commitment in respect to new customers. We trust that this clarification will be effected at an early date.

Where, however, no increase in our present commitment to supply gas to you is involved, and your purpose is solely to purchase on an interruptible basis at the lower rate gas to supply requirements of a particular customer purchased on a firm basis prior to October 1, 1945, we feel free to [fol. 599] accommodate you without application to the Federal Power Commission. At this time, any such commitment to supply on an interruptible basis equivalent quantities of gas previously purchased on a firm basis would, necessarily, contain a specific provision limiting all deliveries to you (both firm and interruptible) on any one day to the present limitation on our deliveries to you, namely, 125 million cubic feet.

In the meantime, it may be of interest to you to know that the Panhandle management is formulating an extended plan for increasing the capacity of its lines. Application in respect to this proposed expansion of facilities will presently be made to the Commission. In the end, it is our expectation to have sufficient gas available at all points of our system to meet the reasonable present and future requirements of yourself and our other customers.

Very truly yours, Hy Byrd, Vice-President and  
Treasurer.

HB:mk

**Exhibit 19****Purpose of Panhandle Eastern Pipe Line Company as stated in its Article of Incorporation**

**“Third: The nature of the business or objects or purposes to be transacted, promoted or carried on by this corporation are:**

(a) To mine for, prospect for, drill for, produce, buy, or in any manner acquire, and to market, sell, transport and distribute, natural gas and/or oil and/or artificial gas and any by-products and residual products thereof, [fol. 600] and to own, hold, maintain and operate and to sell, exchange, lease, encumber, or in any manner dispose of works, buildings, pipe lines, mains, distribution systems, compressor stations, machinery, appliances, apparatus, facilities, rights, privileges, franchises, ordinances, and all such real and personal property as may be necessary, useful or convenient in the production, acquisition, storage, transportation and distribution of natural gas, oil, artificial gas and petroleum, or any of them, and the products or by-products thereof; and to construct and maintain gas wells, oil wells and refineries and to buy, sell and generally deal in natural and/or artificial gas, oil, petroleum and any by-products and residual products thereof.

(b) To construct and maintain conduits and lines of tubing and piping for the transportation of natural gas or oil; to transport such oil and gas by means of such pipes, tanks, cars, or otherwise, and to sell and supply the same to others; to lay, buy, lease, sell and operate pipes, pipe lines and storage tanks to be used for the purpose of transporting and storing oil and gas.

(c) To manufacture, produce, use, distribute, buy and sell natural and/or artificial gas for fuel, heat, light and other purposes, and to manufacture, buy, use, sell, lease and deal in machines and inventions consuming or utilizing gas, oil or vapor as a fuel or as light and heat, and goods, wares and merchandise of every kind and nature.

(d) To acquire, buy, purchase or otherwise construct, lease, let, own, hold, sell, convey, equip, maintain, operate and otherwise deal in and with pipe lines, cars, vessels, tanks, tramways, refineries, reduction plants, and any and

all other conveyances, appliances and apparatus for storing, transporting, distributing, marketing, manufacturing, [fol. 601] distilling, refining, reducing and preparing or otherwise dealing in and with petroleum, gas, gasoline, oil, and the products and by-products thereof.

(e) To purchase, lease, mine for, obtain, hold, and otherwise acquire lands containing minerals or other articles or substances of value, or the mineral rights in any such lands, or rights with respect to the purchase, exploitation, development, sale or use of minerals or other substances of the soil, and to explore, exploit, work, develop, lease to others, or otherwise turn to account all such lands, minerals, and rights so acquired; to market, sell, transport and otherwise deal in minerals or other articles or substances of value taken from the soil and to own, hold, maintain and operate and to sell, exchange, lease, encumber or in any manner dispose of buildings, plants, machinery, apparatus, facilities and all such real and personal property as may be necessary, useful or convenient in the production, acquisition, storage, transportation and sale of minerals or other articles or substances of value of the kinds above mentioned.

(f) To contract for, purchase, acquire, take, hold, own, develop, explore, exploit, improve, operate, lease, let, enjoy, control, manage or otherwise turn to account, mortgage, grant, sell, deal in, exchange, convey, or otherwise dispose of any and all real estate, options, concessions, grants, land patents, oil and gas wells, lands, leases, claims, rights, privileges, franchises, easements, rights of way, tenements, estates, hereditaments, interests and properties of every description and nature whatsoever which the corporation may deem wise and proper in connection with the conduct of any business or businesses enumerated in this Certificate of Incorporation or of any other business in which the corporation may lawfully engage, and to pay [fol. 602] for any of the foregoing real estate, options, concessions, grants, land patents, oil and gas wells, lands, leases, claims, rights, privileges, franchises, easements, rights of way, tenements, estates, hereditaments, interests and properties so acquired, or any of them, in cash, shares of the capital stock, bonds, debentures, debenture stock, notes or other obligations of the corporation or otherwise.

(g) To develop, apply for, purchase, lease, acquire, hold,



use, take or grant licenses in respect of, mortgage, pledge, lease, sell, assign, or otherwise dispose of letters patent of the United States or any foreign country, patent rights, licenses and privileges, inventions, devices, improvements and processes, copyrights, trademarks and trade-names, granted by, recognized or otherwise existing under the laws of the United States or any foreign country.

(h) To purchase or otherwise acquire the whole or any part of the property, assets, business, good-will and rights and to undertake or assume the whole or any part of the bonds, mortgages, franchises, leases, contracts, indebtedness, guaranties, liabilities and obligations of any person, firm, association, corporation or organization, and to pay for the same or any part or combination thereof in cash, shares of the capital stock, bonds, debentures, debenture stock, notes, or other obligations of the corporation or otherwise, or by undertaking and assuming the whole or any part of the liabilities or obligations of the transferror; and to hold or in any manner dispose of the whole or any part of the property and assets so acquired and to conduct in any lawful manner the whole or any part of the business so acquired and to exercise all the powers necessary or convenient in and about the conduct, management and carrying on of such business.

[fol. 603] (i) To borrow money and to issue bonds, debentures, notes, or other obligations of the corporation from time to time, for any of the objects or purposes of the corporation, and to secure the same by mortgage, lien, pledge, deed of trust or otherwise.

(j) To purchase, hold, cancel, re-issue, sell, exchange, transfer or otherwise deal in shares of its own capital stock, bonds, or other obligations from time to time to such an extent and in such manner and upon such terms as its Board of Directors shall determine, provided that shares of its own capital stock belonging to the corporation shall not be voted upon directly or indirectly.

(k) To purchase, subscribe for, acquire, own, hold, sell, exchange, assign, transfer, mortgage, pledge or otherwise dispose of shares or voting trust certificates for shares of the capital stock, or any bonds, notes, securities or evidences of indebtedness created by any other corporation or corporations organized under the laws of this State or any other state or district or country, nation or govern-

ment and also bonds or evidences of indebtedness of the United States or of any state, district, territory, dependency, or country, or subdivision or municipality thereof; to issue in exchange therefor shares of the capital stock, bonds, notes or other obligations of the corporation and while the owner thereof to exercise all the rights, powers and privileges of ownership including the right to vote on any shares of stock or voting trust certificates so owned; to promote, lend money to and guarantee the dividends, stocks, bonds, notes, evidences of indebtedness, contracts or other obligations of and otherwise aid in any manner which shall be lawful any corporation or association of which any bonds, stocks, voting trust certificates, or other securities or evidences of indebtedness shall be held by [fol. 604] or for this corporation, or in which, or in the welfare of which, this corporation shall have any interest, and to do any acts and things permitted by law and designed to protect, preserve, improve or enhance the value of any such bonds, stocks, or other securities or evidences of indebtedness or the property of this corporation.

(l) To organize or cause to be organized under the laws of the State of Delaware, or of any other state, district, territory, nation, colony, province or government, a corporation or corporations for the purpose of accomplishing any or all of the objects for which the corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations or to cause the same to be dissolved, wound up, liquidated, merged or consolidated.

(m) In general, to carry on any other lawful business whatsoever in connection with the foregoing or which is calculated directly or indirectly to promote the interest of the corporation or to enhance the value of its properties, and to have and exercise all the rights, powers and privileges, which are now or may hereafter be conferred by the laws of Delaware upon corporations formed under the act hereinafter referred to; to execute from time to time, general or special powers of attorney to persons, firms, associations, or corporations either in the United States or in any other country, state or locality, and to revoke the same as and when the Board of Directors may determine; and to do any or all of the things hereinbefore set forth to the same extent as natural persons might or could do.

(n) To have one or more offices, to carry on all or any of its operations and business and, without restriction or limit as to amount, to purchase, or otherwise acquire, hold, [fol. 605] own, mortgage, sell, convey or otherwise dispose of real and personal property of every class and description, in any of the States, Districts, Territories, Colonies and possessions of the United States, and in any and all foreign countries, subject to the laws of such State, District, Territory, Colony, possession or Country.

(o) To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers hereinbefore set forth, and to do every other act or acts, thing or things, incidental or appurtenant to or growing out of or connected with the aforesaid business or powers, or any part or parts thereof, provided the same be not inconsistent with the laws under which this corporation is organized.

(p) To enter into, make, perform and carry out contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, corporation or organization.

(q) The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation; and it is the intention that the purposes, objects and powers specified in each of the clauses of this Article Third of this Certificate of Incorporation, shall, except as otherwise expressly provided, in no wise be limited or restricted by reference or inference under the terms of any other clause of this Article or of any other Article of this Certificate of Incorporation, but that each of the purposes, objects and powers specified in this Article and each of the Articles or clauses of this Certificate of Incorporation shall be regarded as independent purposes, objects and powers."



[fol. 606]

## Exhibit 20

Transmission line construction application of Michigan Gas Transmission Company dated March 16, 1936

To the Michigan Public Utilities Commission:

Your Petitioner, Michigan Gas Transmission Corporation, respectfully represents:

1. That Petitioner is a Delaware Corporation whose principal and registered office is at No. 19-21 Dover Green, in the City of Dover, County of Kent and State of Delaware.

2. That it is the purpose of said Corporation to construct transmission mains in Michigan for the transportation or conveying of natural gas from gas reserves in and about the State of Texas to the Detroit City Gas Company of Detroit, Michigan.

3. That attached hereto and made a part hereof is a map or plat of such proposed pipe line showing the route of said pipe line in the State of Michigan, and also attached hereto and made a part hereof are the specifications for said proposed pipe line showing engineering data in connection therewith.

4. That the construction of said proposed pipe line will be at least the equal of, if not better than the tentative code for pressure piping prepared by the American Standards Association sponsored by the American Society of Mechanical Engineers.

5. That Petitioner does not propose to act as a common carrier for hire.

[fol. 607] 6. That Petitioner has not been licensed to do business in the State of Michigan because it is and will be engaging solely in interstate commerce in said State.

And said Petitioner therefore prays that the Michigan Public Utilities Commission, under the authority of Act No. 9 of the Public Acts of Michigan for the year 1929 may grant to said Petitioner its approval of the said map or plat, and of the construction of said line, and may determine that said line when constructed and in operation will serve the convenience and necessity of the public.

(Duly signed and verified under oath.)

(Here follows 1 map Exhibit 20, folio 608.)

See Card 9 for Exhibit 20,  
(Page 458A)

[fol. 609]

## Exhibit 21

Order of Michigan Public Utilities Commission, dated March 30, 1936, granting application of Michigan Gas Transmission Company.

In this matter the Michigan Gas Transmission Corporation having on March 17, 1936, filed its petition herein averring that it is a corporation organized and existing under the laws of Delaware, with its principal office at Numbers 19-21 Dover Green in the City of Dover, Kent County, Delaware; and that it desires to be authorized to construct natural gas transmission mains in Michigan for the transportation and conveyance of natural gas from gas reserves in and about the State of Texas to the Detroit City Gas Company at Melvindale, Michigan; and said petitioner having filed a map or plat of its proposed line showing the route of said pipe line substantially as set forth in the caption of this order; and having also filed specifications for said proposed pipe line showing certain engineering data;

Said petitioner further averring that said proposed pipe line will be built in such a way as to at least comply with the code for pressure piping laid down by the American Standards Association;

Said petitioner further averring in the application that it will be engaged solely in interstate commerce as far as its Michigan business is concerned;

And on the receipt of this petition the Commission having entered an order of hearing and by mail served a copy of said order of hearing on the Detroit City Gas Company, and on the City of Detroit, and on all other municipalities now being served with gas by the Detroit City Gas Company, [fol. 610] and on all other persons which this Commission believed were entitled to be notified; and on the date of hearing, namely: on this date, March 30, 1936, the petitioner having produced witnesses before the Commission who were duly sworn and examined on all matters relevant to the petition of petitioner;

And the Commission knowing of no reason why the prayer of the petitioner should not be granted, it appearing to the Commission that the construction of said interstate natural gas transmission line will be of benefit and convenience to the City of Detroit and about twenty-five



surrounding municipalities and inhabitants thereof; and also that the construction of said natural gas transmission line is necessary in the public interest;

Therefore, it is hereby ordered by the Michigan Public Utilities Commission:

1—That said petitioner corporation, Michigan Gas Transmission Corporation, should be and it is hereby authorized to construct an interstate natural gas transmission line which will enter the State of Michigan from Ohio at a point three or four miles west of the southeast corner of Lenawee County, thence extending from said point in a northeasterly direction across the County of Lenawee, County of Monroe and County of Wayne to the River Rouge Plant of the Detroit City Gas Company situated in the City of Melvindale, which city is adjacent to the City of Detroit, said natural gas transmission line to be constructed according to the best standards for the construction of such lines and according to the plans and specifications set forth in the petition of the petitioner; said transmission line to be constructed for the purpose of serving the City of Detroit and adjacent and surrounding communities with natural gas.

[fol. 611] 2—That from the petition and the proofs it appears that the petitioner corporation has available to it a sufficient quantity of natural gas in the State of Texas and surrounding states to enable it to serve the Detroit area for a reasonable length of time, and at least fifteen (15) years; and that said petitioner corporation has entered into such contracts and made such arrangements as will enable it to transmit said natural gas through pipe lines of others and its own to the market at the City of Melvindale, adjacent to Detroit; and that the petitioner corporation has legally contracted and agreed to carry out a contract between the Detroit City Gas Company and the Panhandle Eastern Pipe Line Company for the distribution of said natural gas in the Detroit area, which contract and agreement is to be in force for not less than fifteen (15) years; all of which contracts have been filed as exhibits in this matter;

3—That the said petitioner corporation, the Michigan Gas Transmission Corporation is hereby granted a certificate of public convenience and necessity for the construc-

tion of said pipe line in Michigan as hereinbefore described;

4—That it appears from the petition and proofs that the Michigan Gas Transmission Corporation, in conveying gas to the Detroit area will be engaged in interstate commerce only, but should said petitioner corporation engage in Michigan business it shall, before it shall do so, become domesticated in the State of Michigan according to the laws of said State, this order not assuming or purporting to give to said petitioner corporation any right to perform any local business in Michigan or any business except that in interstate commerce;

5—That said Michigan Gas Transmission Corporation shall in all things comply with the provisions of Sections [fol. 612] 11632 to 11651, inclusive, of the Compiled Laws of the State of Michigan for the year 1929 so far as the provisions of said statutes are applicable to said corporation, and as soon as said natural gas transmission line shall have been wholly constructed, said Michigan Gas Transmission Corporation shall file in the offices of this Commission a plat showing in detail and with precision the pipe line within the State of Michigan together with the location of all compression stations, control valves and connections and such other engineering information as may be reasonably supplied in connection with said plat.

The Commission hereby expressly reserves unto itself jurisdiction of this matter and the right to make any further order herein which, in its judgment, shall be hereafter made.

[fol. 613]

#### Exhibit 22

Application of Panhandle Eastern Pipe Line Company dated May 29, 1941, re construction of line to serve Consumers Power Company.

To the Michigan Public Service Commission:

Your Petitioner, Panhandle Eastern Pipe Line Company, respectfully represents:

1. That Petitioner is a Delaware Corporation, whose principal office is located at 1221 Baltimore Avenue, Kansas City, Missouri.

2. That it is the purpose of said corporation to con-

struct transmission mains in Michigan for the transportation or conveying of natural gas from gas reserves in and about the State of Texas to various communities in the State of Michigan.

3. That attached hereto and made a part hereof is a map or plat of such proposed line showing the approximate route of said pipe line in the State of Michigan; inasmuch as the surveys have not been made and right-of-way has not been acquired, the same having been delayed until action has been taken by this Commission, the definite descriptions of the proposed line are not available at this time. The general description of the location of the said line however will be as follows:

"Beginning at a point near the Ohio-Michigan State line on the existing line of the Michigan Gas Transmission Corporation's line running in a Northerly direction to a point eight (8) miles West of the Vil-[fol. 614] lage of Zilwaukee. Also a line connecting therewith at a point about twenty (20) miles East of Jackson and running in a Westerly direction to Jackson, Albion, Marshall, Battle Creek and Kalamazoo. Also a branch line connecting with the North and South line East into the Consumers Power Generating Station at Royal Oak."

4. That the construction of said proposed pipe line will be at least the equal of, if not better than the tentative code for pressure piping prepared by the American Standards Association, sponsored by the American Society of Mechanical Engineers. The complete engineering data and specifications are not available at this time but will be furnished this Commission on the date set for hearing on this petition.

5. That Petitioner does not propose to act as a common carrier for hire.

6. That Petitioner has not been licensed to do business in the State of Michigan because it is and will be engaging solely in interstate commerce in said State.

7. That Petitioner has entered into a contract with the Consumers Power Company to furnish natural gas through the above described pipe line to the City Gate of various communities in the State of Michigan.



Therefore, Petitioner prays that this Commission approve the attached map or plat and grant the Petitioner the right to construct and operate the above described line, and grant such other relief as it may be entitled to under this petition.

(Duly signed and verified under oath.)

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(Here follows 1 map, folio 614a)

See Card 9 for folio 614a  
(Page 464A)





[fol. 615]

## Exhibit 23

Order of Michigan Public Service Commission dated June 18, 1941, authorizing construction of line to serve Consumers Power Company.

On May 29, 1941, the Panhandle Eastern Pipe Line Company filed with this Commission a petition representing that it is a Delaware corporation with its principal office at 1221 Baltimore Avenue, Kansas City, Missouri, and that it is the desire of the petitioner to construct transmission mains or pipe lines in Michigan for the transportation or conveying of natural gas originating from gas reserves in and about the State of Texas to the city gates of various communities in the State of Michigan, as hereinafter stated.

The petitioner appeared by its counsel, as shown by the record herein. No one appeared in opposition to the petition, although several parties intervened in said cause.

It was shown by the petitioner that it had entered into a fifteen-year contract with the Consumers Power Company to deliver natural gas at the city gates of the Flint, Pontiac, Jackson, Kalamazoo divisions, the city of Marshall and at a point on the present pipe line serving the Owosso division, the amount of gas to be delivered to be at least equal to 70% of the requirements of the foregoing divisions. The contract further provides that the remaining requirements up to 30% may be Michigan Natural gas furnished by the Consumers Power Company itself and delivered to the proposed pipe line system of the petitioner at a point approximately 8 miles west of the community of Zilwaukee.

[fol. 616] It was further shown that the said contract is of the demand type so that the unit price charged will be lowered by a more uniform take of gas. The use of the Michigan gas in larger quantities at the time of the peak load will have the effect of making the take of the Texas gas more uniform than otherwise and will, consequently, lower its price to the Consumers Power Company.

The petitioner represents that it has large reserves of natural gas in the Amarillo field in Texas and Hugoton field in Kansas because of its own ownership of oil and gas leases and its contracts with others. These reserves

are estimated to be sufficient to furnish all of the petitioner's existing and presently anticipated requirements for a period in excess of twenty-five years. The heating value of the Texas gas is represented to average approximately 1015 B.t.u. per cubic foot so that there will be no particular difficulty in mixing it with the Michigan natural gas which ranges in heating value from about 1060 B.t.u. to as low as 850 B.t.u. in a few cases.

The petitioner has shown that it has a pipe line of large capacity connecting the Amarillo and Hugoton fields with Dana, Illinois and that the Michigan Gas Transmission Corporation has a pipe line connecting Dana, Illinois with the city of Detroit and an agreement with the Panhandle Eastern Pipe Line Company whereby gas is available to the Panhandle Eastern Pipe Line Company in Michigan from the Detroit line. The petitioner, the Panhandle Eastern Pipe Line Company, has filed with its petition, a map or plat showing the proposed route of its pipe line system in Michigan which may be described in general as follows:

Beginning at a point near the Ohio-Michigan State line on the existing line of the Michigan Gas Transmission Corporation pipe line, a 20" line extends in [fol. 617] a northerly direction approximately 37.9 miles to a junction point whence one 18" branch the north line, extends in a northeasterly direction 34.1 miles to a junction point from which a 12" line extends east to a point in the vicinity of the Royal Oak generating plant of the Consumers Power Company near Clawson, a distance of 24.3 miles, and a 16" branch continues on north to the city gate of Flint, a distance of 32.2 miles from which point a 12" line continues on to the northwest, a distance of 45.7 miles to the junction with the Consumers Power Company line at a point approximately 8 miles west of the community of Zilwaukee. Beginning at the north end of the 20" line, the other branch, or west line, continues to Jackson, Marshall and to Battle Creek as a 16" line for a distance of approximately 61.4 miles, and from Battle Creek a 12" line continues on to Kalamazoo a distance of approximately 20.8 miles.



The exact route of the above pipe line is not now known as the right of way for it has not yet been secured, but the petitioner has stated that it will file with this Commission exact information as to the location of the line when it is known. Complete engineering specifications covering the construction of the line have been filed and it is represented that the construction will be at least the equal of, if not better than, the standards for pressure piping of the American Standard Association. The estimated cost of the proposed pipe line system is \$4,633,000.

In determining the full significance of this petition, it has been necessary to also consider the petition and supporting testimony of the Consumers Power Company relative to its proposed plan for changing over to natural gas [fol. 618] its Flint, Owosso, Pontiac, Jackson, Marshall and Kalamazoo divisions which are now being served with manufactured gas. The combined Michigan and Texas gas will be used for the service of the above divisions and the entire plan will result in very material benefit to the people of the State of Michigan by virtue of lowered prices for gas, expanded markets for Michigan gas, and broadened service for space heating and industrial operations in the above mentioned communities.

On the 16th day of June, 1941, petitioner filed with this Commission, under protest, its application to be permitted to do business in Michigan. A determination of the pending application will resolve the question as to whether or not the petitioner will be "doing business within the State of Michigan", as that phrase is applied to foreign corporations; and accordingly that question is not here determined.

After a careful consideration of this entire matter, the Commission finds that the construction of the proposed pipe line system by the Panhandle Pipe Line Company will serve the convenience and necessities of the Public and should be approved.

Now, therefore, it is hereby ordered, by the Michigan Public Service Commission:

1. That the Panhandle Eastern Pipe Line Company is hereby authorized to construct and operate a natural gas transmission pipe line described in general as follows:

Beginning at a point near the Ohio-Michigan State line on the existing line of the Michigan Gas Trans-

mission Corporation pipe line, a 20" line extends in a northerly direction approximately 37.9 miles to a [fol. 619] junction point whence one 18" branch, the north line, extends in a northeasterly direction 34.1 miles to a junction point from which a 12" line extends east to a point in the vicinity of the Royal Oak generating plant of the Consumers Power Company near Clawson, a distance of 24.3 miles, and a 16" branch continues on north to the city gate of Flint, a distance of 32.2 miles from which point a 12" line continues on to the northwest, a distance of 45.7 miles to the junction with the Consumers Power Company line at a point approximately 8 miles west of the community of Zilwaukee. Beginning at the north end of the 20" line, the other branch, or west line, continues to Jackson, Marshall and to Battle Creek as a 16" line for a distance of approximately 61.4 miles, and from Battle Creek a 12" line continues on to Kalamazoo a distance of approximately 20.8 miles.

2. That the Panhandle Eastern Pipe Line Company is hereby granted a certificate of public convenience and necessity for the construction of the above described pipe line.

3. That the map or plat filed with the Commission showing the route of the above described pipe line is hereby approved and the petitioner is directed to file with this Commission within 60 days after the completion of construction, a map or plat showing the exact location of the pipe line as actually constructed together with the location of all control valves and connections and such other information as may be reasonably supplied in connection with said plat.

4. That said Panhandle Eastern Pipe Line Company shall in all things comply with the provisions of Sections 11632 to 11651 inclusive, of the Compiled Laws for the [fol. 620] State of Michigan, for the year 1929 so far as the provisions of said statutes are applicable to said corporation.

The Commission hereby expressly reserves unto itself jurisdiction of this matter and the right to make any further order herein which in its judgment shall be hereafter made.

**Exhibit 24****Application of Panhandle Eastern Pipe Line Company for  
admission to do business in Michigan****Foreign Corporation****State of Michigan****Michigan Public Service Commission****To the Michigan Public Service Commission:**

Your Petitioner Panhandle Eastern Pipe Line Company respectfully represents:

1. That it is a corporation existing under and by virtue of the laws of the State of Delaware and desiring to be admitted to do business in the State of Michigan under the provisions of Act No. 327 of the Public Acts of 1931 for the purpose of Producing, purchasing, transporting, and selling natural gas and constructing, operating, and maintaining pipe lines and other transmission facilities incidental to all of the foregoing and all such other powers and purposes set out in Petitioner's Certificate of Incorporation as amended.

2. That the location of its principal office is 19-21 Dover Green, Dover, Delaware. That the location of its principal place or places of business is: 1221 Baltimore, Kansas City, Missouri, and 90 Broad Street, New York, N. Y.

[fol. 621] That the names and addresses of its principal officers are: Joe D. Creveling, President, 90 Broad St., New York, N. Y.; Gerard J. Neuner, Vice President in Charge of Operations, 1221 Baltimore, Kansas City, Missouri; Leith V. Watkins, Secretary-Controller, 90 Broad St., New York, N. Y.; Louis F. Sperry, Treasurer, 90 Broad St., New York, N. Y.

3. That the location of its principal office and the principal place of business in Michigan is: 1400 Olds Tower Building, Lansing, Michigan.

That the names and addresses of the officers or agents of the corporation in charge of its business in Michigan are: Clayton F. Jennings, Agent, 1400 Olds Tower Bldg., Lansing, Michigan.

4. That a copy of the Articles of Association, together



with all amendments thereto executed and adopted by said corporation is hereto attached and marked Exhibit "A," and forms a part of this petition.

5. That the total value of the property owned and used by such corporation in its business (state its location and general character and state separately the value of the tangible property, of the cash and credits, and of franchises, patents, trademarks, formulas and good will) is: Total \$ \_\_\_\_\_ consisting of:

Petitioner is engaged in the production, purchase, transmission, and sale of natural gas, the major part of which is sold to gas transmission companies and to gas distribution companies for resale. Its principal natural gas transmission system extends from the Amarillo gas field in the Texas Panhandle and from the Hugoton gas field in Southwestern Kansas through the states of Oklahoma, Kansas, Missouri, and Illinois to a point near Dana, Indiana, adjacent to the Illinois-Indiana boundary.

For total value of property owned and used by the petitioner in its business refer to Condensed Balance Sheet attached.

6. A. That the value of the property owned and used in Michigan (state the location and general character of the same and list separately) is: Total \$ None consisting of:

B. That the value of property (tangible and intangible) used or to be used in Michigan (state location and general character of same), not already fully included under item 6A, is:

Total \$ \_\_\_\_\_ consisting of:

None at this time.

Amount to be used Unknown, estimated to aggregate approximately \$4,633,000 ultimately.

C. That the amount of cash and credits, and all other intangible property, including capital investments, used in or acquired from the conduct of business in Michigan, (state the location and general character of same), not already fully included under Item 6A or 6B above, is: Total \$ None consisting of:

Total Michigan Property (Total of A, B and C) Unknown.

7. That the total amount of business transacted by it during the preceding year is: \$13,051,628.92.

That the amount of business transacted by it in Michigan is: None.

[fol. 623] 8. (Note: State below such other information and facts as may be relevant in this matter:) None.

9. That the authorized capital stock of said corporation is:

[fol. 623]

Class and Series of Stock	No. of Shares Authorized	Par Value Stock	Value Per Share		
			Non Par Stock		
			Book Value	Stated Value	Price Fixed for Sale
Common Stock.....	810,000	.....	.....	\$25.00	.....
Total Common Stock.....	810,000	.....	.....	25.00	
Preferred Stock					
Class A.....	100,000	\$100.00			
Class B.....	10,000	\$100.00			
Total Preferred Stock.....	110,000	\$100.00			

10. That the capital stock issued and outstanding of Petitioner is: 917,367 shares. And that such stock consists of:

Class and Series of Stock	Actually Outstanding		Held by Petitioner		Total Outstanding	
	Shares	Amount	Shares	Amount	Shares	Amount
Common Stock.....	807,367	\$20,184,175	.....	.....	807,367	\$20,184,175
Total Common Stock	807,367	\$20,184,175	.....	.....	807,367	\$20,184,175
Preferred Stock						
Series A....	100,000	\$10,000,000	.....	.....	100,000	\$10,000,000
Series B....	10,000	\$ 1,000,000	.....	.....	10,000	\$ 1,000,000
Total Preferred Stock.	110,000	\$11,000,000	.....	.....	110,000	\$11,000,000

[fol. 624]

## Exhibit B

**Panhandle Eastern Pipe Line Company**  
**Condensed Balance Sheet as at March 31, 1941**

(Unaudited)

Assets	
Gas Plant.....	\$61,682,038.91
Intangible, representing gas sales and purchase contracts, etc.....	\$3,483,622.03
Less—Reserve for Amortization of gas sales and purchase contracts.....	1,538,400.15
	1,945,221.88
Investment in Securities of Associated Companies.....	2,635,391.43
Other Investments.....	218,928.55
Cash.....	5,261,339.04
Special Deposits.....	1,665,828.23
Accounts and Notes Receivable.....	\$1,430,993.81
Less—Reserve for doubtful accounts.....	32,219.88
	1,398,773.93
Materials and Supplies.....	259,513.00
Prepayments and Other Deferred Charges.....	822,959.46
Debt Discount and Expense in Process of Amortization.....	2,158,254.43
<b>TOTAL ASSETS.....</b>	<b>\$78,048,248.86</b>
Liabilities	
Capital Stock:	
Common (No Par, 810,000 shares authorized—807,367 issued) (1).....	\$20,184,175.00
Preferred, Class A (\$100 Par) 100,000 Shares.....	10,000,000.00
Class B (\$100 Par) 10,000 Shares.....	1,000,000.00
Mortgage Bonds, Series A, due Serially November 1, 1946 to November 1, 1950, inclusive.....	6,250,000.00
Mortgage Bonds, Series B, due November 1, 1960.....	12,000,000.00
Serial Notes, Series A, B, C, and D, due Serially November 1, 1942 to November 1, 1945, inclusive.....	5,000,000.00
Other Long Term Debt.....	22,113.66
[fol. 625]	
Accounts Payable.....	224,426.63
Dividends Declared—Preferred.....	165,000.00
Matured Long-Term Debt.....	1,659,795.23
Accrued Taxes.....	(2) 2,904,951.23
Accrued Interest.....	230,640.41
Other Current and Accrued Liabilities.....	2,410.10
Deferred Liabilities.....	43,355.32
Reserve for Depreciation, Depletion and Amortization.....	9,231,904.50
Other Reserves.....	740,286.08
Surplus.....	(3) 8,389,190.70
<b>TOTAL LIABILITIES.....</b>	<b>\$78,048,248.86</b>

(1) 1,285 unissued shares available for fulfillment of purchase obligation at \$25.00 per share.

(2) Including Federal Income and Excess Profits Taxes computed without regard to special deductions resulting from refinancing consummated during February 1941 and without making provision for possible increases in rates or otherwise during 1941.

(3) Surplus is restricted in the amount of \$4,113,952.58 by the Mortgage and Deed of Trust dated November 1, 1940, as to payment of dividends.



11. A. That the authorized Long Term Debt of Petitioner is: ..... \$23,250,000

B. That the Long Term Debt outstanding of Petitioner is: ..... \$23,250,000

and that such debt is distributed as follows:

Class and Series of Obligation	Date of Maturity	Principal Amount Authorized	Amount Outstanding
		A	B
Mortgage Bonds, Series A	Due Serially Nov. 1, 1946 to Nov. 1, 1950	\$ 6,250,000	\$ 6,250,000
Mortgage Bonds, Series B	Due Nov. 1, 1960	\$12,000,000	\$12,000,000
Serial Notes, Series A, B, C, & D	Due Serially Nov. 1, 1942 to Nov. 1, 1945	\$ 5,000,000	\$ 5,000,000

[fol. 626] 12. That a Balance Sheet \* of Petitioner as of March 31, 1941 is hereto attached and marked Exhibit "B" and forms a part of this petition.

13. That a draft in the amount of \$50.00 is hereto attached and was determined as follows:

$$\left\{ \frac{\text{Total Property in Michigan (Paragraph 6)}}{\text{Total Property of Corporation (Paragraph 5)}} \right\} \times \text{Total Securities Outstanding} \times \frac{1}{10} \text{ of } 1\% = \text{Amount of Draft (Paragraphs 10 and 11)}$$

(Note: The minimum fee is \$50.00).

Wherefore, your Petitioner respectfully requests your Honorable Body (under the provisions of Act No. 144 of the Public Acts of 1909 and Act 3 of the Public Acts of 1939, of the State of Michigan, and under the Rules and Practice of said Commission), by its order:

(1) To authorize the filing of the Articles of Association of said Petitioner with the Corporation and Securities Commission of the State of Michigan, and its admission to do business in this State as a foreign corporation.

(2) To authorize and consent to validation of the issu-

\* Balance Sheet as of a recent calendar month.

ance, sale and delivery, by your Petitioner, of the capital stock set forth above,

And your Petitioner will ever pray.

Panhandle Eastern Pipe Line Company, By G. J. Neuner, Vice-President.

[fol. 627] STATE OF MISSOURI;

County of Jackson, ss.

On this 12th day of June A. D. 1941, before me, the undersigned, a Notary Public in and for said County, personally appeared G. J. Neuner known to me to be the person who executed the foregoing petition on behalf of Panhandle Eastern Pipe Line Company and made oath that he is duly authorized to execute said petition in its behalf; that he has read said petition and knows the contents thereof; that the same is true of his own knowledge.

Mary C. Magers, Notary Public Jackson County, Missouri, My commission expires August 31, 1943.

STATE OF NEW YORK,

County of New York, ss.

We, the undersigned, J. D. Creveling, Robert C. Winmill and R. A. Ransom being severally sworn, each for himself, say that he is a director of the petitioning corporation and as such, makes this affidavit for and in behalf of the corporation; that it is the intention of said corporation, in good faith, to conduct its business in accordance with the laws of the State of Michigan regulating such corporations.

J. D. Creveling, Robert C. Winmill, R. A. Ransom.

[fol. 628] Subscribed and sworn to before me this 13th day of June, A. D. 1941.

Frank A. Moyer, Notary Public, Kings Co., N. Y., No. 2221. N. Y. Co. Clk's No. 574, Reg. No. 2M853. My commission expires March 30, 1942.

- Note: 1. The foregoing affidavit should be signed by three directors.
2. Original and one copy of this application must be filed with the Secretary of the Commission before the case can be set for hearing.

I, Leith V. Watkins, Secretary of Panhandle Eastern Pipe Line Company, do hereby certify that the following is a true and complete copy of resolutions duly adopted by the Board of Directors of said Company at a meeting duly held at New York, N. Y., on May 20, 1941, at which a quorum was present and acting throughout:

Resolved that the proper officers of this Company be and they hereby are authorized and empowered to take all necessary and proper steps to procure the licensing of this Company to transact business as a foreign corporation in the State of Michigan;

Resolved that the proper officers of this Company be and they hereby are authorized and empowered to execute from time to time in their own names or in the name of this Company and under its corporate seal and to file all certificates, statements, reports, powers of attorney or other instruments as are now or hereafter required by law in the State of Michigan; and [fol. 629] Resolved that, if the application to procure a license of this Company to transact business as a foreign corporation in the State of Michigan is made, Clayton F. Jennings of Ingham County, Lansing, Michigan, whose business address is 1400 Old Tower Building, Ingham County, Lansing, Michigan, be and he is duly appointed the agent of this Company, and authorized to accept service of any and all process for and on behalf of this Company; and this Company does hereby consent that service of process upon said Clayton F. Jennings shall be taken and held to be as valid as if served upon this Company, according to the laws of the State of Michigan or any other State and this Company hereby waives all claim of error by reason of such service.

Witness my hand and the corporate seal of said Company, this 4th day of June, 1941.

Leith V. Watkins, Secretary.



## [fol. 630] Appointment of Agent

Michigan Corporation and Securities Commission, Lansing,  
Michigan.

At a Special Meeting of the Board of Directors of the Panhandle Eastern Pipe Line Company duly called, and held at the office of the Company at the City of New York on the 20th day of May A. D., 1941, the following resolution was adopted: Resolved, that if the application to procure a license of this Company to transact business as a foreign corporation in the State of Michigan is made, Clayton F. Jennings of Ingham County, Lansing, Michigan, whose business address is 1400 Olds Tower Building, Ingham County, Lansing, Michigan, be and he is duly appointed the agent of this Company, and authorized to accept service of any and all process for and on behalf of this Company; and this Company does hereby consent that service of process upon said Clayton F. Jennings shall be taken and held to be as valid as if served upon this Company, according to the laws of the State of Michigan or any other State and this Company hereby waives all claim of error by reason of such service.

Panhandle Eastern Pipe Line Company, (Name of  
Company), By Leith V. Watkins. (Secretary).

[fol. 631] STATE OF MISSOURI,  
County of Jackson, ss.

G. J. Neuner, Vice-President of the Panhandle Eastern Pipe Line Company, does hereby certify that the above and foregoing is a true and correct copy of a resolution adopted on 20th day of May A. D., 1941, appointing Clayton F. Jennings the agent of said Company to accept service of process.

In Witness Whereof, I have hereunto set my hand and caused to be affixed the seal of said Panhandle Eastern Pipe Line Company at the City of Kansas City, Missouri, this 11th day of June A. D. 1941.

G. J. Neuner, Vice-President.

[fol. 632]

## Exhibit 25

Letter of Shields, Ballard, Jennings & Taber, dated April 7, 1942, withdrawing protest of Panhandle Eastern Pipe Line Company.

Michigan Public Service Commission, State Office Building, Lansing, Michigan

Attention: Secretary's Office

Gentlemen:

In June, 1941 Panhandle Eastern Pipe Line Company made application for approval by the Commission of its application to be admitted to do business in the State of Michigan. At the time this application was made because it was then the thought of the Commission that it would be necessary for this corporation to be domesticated before the Commission could enter an order permitting it to construct pipe lines in the State of Michigan. The application was made under protest, and it was later determined that domestication was not necessary.

In the future it may be that the Panhandle Eastern Pipe Line Company will wish to do business in the State of Michigan. Therefore, we withdraw our protest filed with the application for domestication, and request that the Commission proceed to the approval of the application. The statutory fee was deposited at the time the application was originally filed.

Yours truly, Shields, Ballard, Jennings & Taber,  
By Clayton F. Jennings.

CFJ:O

[fol. 633]

## Exhibit 26

Gas Contract between Panhandle Eastern Pipe Line Company and Consumers Power Company, dated April 30, 1941.

This agreement made and entered into this 30th day of April, 1941, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, having its principal office at Kansas City, Mo., hereinafter design-

Power Company, incorporated under the laws of the State of Maine, and organized under the laws of the State of Michigan to do a gas and electric business, with its principal office in that state in Jackson, Michigan, hereinafter designated as Buyer, party of the second part.

Whereas, Seller represents that:

A. It owns natural gas reserves and production facilities in the States of Texas and Kansas, from and by which natural gas is being and can be produced in quantities adequate to meet the requirements of Buyer over and above all other contracts heretofore or hereafter made for the sale of natural gas by the Seller.

B. It owns natural gas transmission pipe lines extending from its production areas to a point near the Illinois-Indiana state line, at which point these lines connect with the transmission lines of the Michigan Gas Transmission Corporation, through which it sells and delivers natural gas to its customers in Indiana, Ohio and Michigan.

[fol. 634] C. It is contemplating the construction of a gas transmission pipe line from a point on the Michigan Gas Transmission Corporation lines to a point approximately eight (8) miles west of the town of Zilwaukee, Michigan, which line is hereinafter referred to as Seller's "North Line," and of a gas transmission line from a point on its North Line to a point near Kalamazoo, Michigan, which line is hereinafter referred to as its "West Line." The approximate presently contemplated route of these lines is shown on a map marked Exhibit A, attached hereto and made a part hereof.

D. It is willing to provide or cause to be provided the adequate capacity in its own existing transmission facilities, and those which carry its gas under contract, as well as in its North Line and its West Line, for transporting and delivering to Buyer all of the gas requirements of Buyer for distribution in its Pontiac, Flint, Owosso, Jackson, Battle Creek and Kalamazoo divisions, hereinafter defined, and it now has sufficient quantities of natural gas available for that purpose and is willing to sell to Buyer natural gas in quantities to meet Buyer's requirements for distribution in the divisions above mentioned, and desires and expects ultimately to contract for the sale to Buyer of natural gas for resale in other areas in Michigan served by Buyer.



Whereas, Buyer represents that:

A. It is a public utility and owns and operates gas manufacturing plants and distribution systems in its several divisions in the State of Michigan, serving natural and manufactured gas to various communities, and that included among these communities are;

In the Pontiac Division, the cities of Pontiac, Birmingham, Royal Oak, Ferndale, Bloomfield Hills, Berkley, Clawson, [fol. 635] Huntington Woods, Pleasant Ridge and Farmington in Oakland County, and the cities of Mt. Clemens, Utica, Centerline and East Detroit in Macomb County, the city of Plymouth in Wayne County, and a number of towns and villages, all connected together by transmission lines owned by Buyer and all now served with manufactured gas.

In the Flint Division, the cities of Flint, Davidson, Lapeer and a number of towns and villages, all connected together by transmission lines owned by Buyer and all now served with manufactured gas.

In the Owosso Division, the cities of Owosso, Corunna, St. Johns and Durand, and a number of towns and villages, all connected together by transmission lines owned by Buyer and all now served with manufactured gas.

In the Jackson Division, the city of Jackson and a number of towns and villages, all connected together by a transmission line owned by Buyer and now served with manufactured gas.

In the Battle Creek Division, the city of Marshall now served with manufactured gas.

In the Kalamazoo Division, the city of Kalamazoo, and the municipalities of Galesburg, Vicksburg, Schoolcraft, Paw Paw, Lawton, Decatur, Hartford, Lawrence and Bangor and a number of other towns and villages, all connected together by transmission lines owned by Buyer and all now served with manufactured gas.

Gas service in all the communities of the above mentioned divisions is understood to include the environs of such communities.

[fol. 636] B. It is desirous of meeting the reasonable demands for natural gas of all the present and future consumers of gas in the above-mentioned communities and all other nearby communities connected to and receiving serv-

ice from its existing distribution or transmission lines in the above said several divisions and those communities not now having gas service to which extensions from said lines may be reasonably made by Buyer, and the respective environs of all such communities, hereafter collectively referred to for convenience as "Buyer's Field of Service", for natural gas for resale and distribution.

C. It has contracted to obtain from Michigan fields, a supply of natural gas for the above mentioned Field of Service and now has, has under construction or contemplates the construction of, transmission lines to bring such gas from the Michigan fields to a point approximately eight (8) miles west of Zilwaukee where it desires to deliver the same into Sellers proposed North Line for use in Buyer's Field of Service; but as the supply of gas from Michigan fields is now and may continue to be inadequate for its entire requirements in its Field of Service, it is desirous of purchasing from Seller the quantities of natural gas required by it over and above such quantities it obtains from said Michigan fields, to the extent hereinafter provided.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

[fol. 637]

## Article I

### Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

1. The term "day", shall mean a period of twenty-four (24) consecutive hours beginning and ending at 7:00 o'clock A. M. Eastern Standard Time.
2. The term "month" shall mean the period beginning at 7:00 o'clock A. M. Eastern Standard Time on the first day of a calendar month and ending at 7:00 o'clock A. M. Eastern Standard Time on the first day of the next succeeding calendar month.
3. The term "environs" shall mean contiguous territory immediately outside the corporate limits of the communities covered herein, which territory Buyer can reason-

ably serve from the distribution mains and extensions thereof of such communities.

4. The term "Special Industrial Customer" shall mean an industrial consumer which purchases gas under a special contract providing for the curtailment or interruption of delivery in the event of an insufficiency in the supply of gas available for such delivery.

[fol. 638]

## Article II

Seller agrees that:

A. It will enlarge, extend, develop, maintain and operate its own gas producing properties and its transmission lines and facilities, and require that other lines which carry its gas be enlarged, extended, developed, maintained and operated in a manner so that it will at all times from the commencement of delivery hereunder and during the continuance of this contract, be able to supply and deliver natural gas of the quality and quantity required by this contract.

B. It will sell and deliver to Buyer at the rates and under the terms and conditions hereinafter set forth, the natural gas necessary to furnish Buyer's day to day requirements from Seller for resale and distribution to all consumers of gas in Buyer's Field of Service, and will adequately and continuously supply the requirements of the Buyer for all consumers of gas in Buyer's Field of Service at all times during the continuance of this contract and will cooperate with Buyer to enable Buyer to supply natural gas in accordance with and in fulfillment of Paragraph B of Buyer's representations herein.

C. The natural gas delivered to Buyer under this contract shall at all times be merchantable and—

1—Shall be commercially free from solid or liquid matter, dust, gum, or gum forming constituents;

2—Shall contain not more than one (1) grain of Hydrogen Sulphide per one hundred (100) cubic feet;

3—Shall contain not more than twenty (20) grains of total sulphur per one hundred (100) cubic feet;

[fol. 639] 4—Shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the temperature and pressure of the gas in the main pipe.



line at a point approximately fifty (50) feet in advance of meter inlet headers at or near Points of Delivery, and water shall not be present in the liquid phase;

5—Is assumed but not guaranteed to have a total heating value of one thousand (1000) British thermal units per cubic foot; but in no event shall the total heating value of the gas fall below nine hundred fifty (950) British thermal units per cubic foot, nor exceed one thousand sixty (1,060) British thermal units per cubic foot;

6—Shall be furnished at such a pressure as Buyer may require, up to but not exceeding one hundred (100) pounds to the square inch gauge pressure, at Points of Delivery.

D. It will install, maintain and operate at its own expense, meters, metering equipment and regulators at or near Points of Delivery, necessary to measure the quantity and regulate the pressure of all gas delivered by it under this contract.

E. It shall and does hereby warrant the title to all gas delivered by it under this agreement and its right to sell the same, and that such gas shall be free and clear of all liens and adverse claims.

F. In case it shall sell to any distributor in the State of Michigan for resale in such state firm gas (except from local production) under a gate rate schedule other than existing schedules, it shall tender the same schedule of rates to Buyer.

G. In consideration of the cost to Buyer of installing natural gas service, and the expense and outlay of Buyer [fol. 640] in changing over its distribution systems and customers' appliances to adapt them to the distribution of natural gas pursuant to this contract, Seller will pay Buyer an amount equal to one (1) dollar per customer for each metered customer of Buyer, in each of the divisions, who was such customer at the time when the change-over in such division was commenced, such payments to be made in twelve equal monthly payments commencing with the month next succeeding the month in which the change-over in such division was completed, and upon statements furnished by Buyer to Seller.

H. Upon receipt of notice from Buyer under Paragraph A of Article III of this Agreement that the necessary permits from governing bodies have been granted to it in a manner satisfactory to the Buyer, and that selling rate

schedules satisfactory to Buyer have been approved, Seller will proceed with due diligence and efforts to obtain all necessary grants, certificates, government authorizations and permits relating to the construction of its gas transmission lines and the rendering of service hereunder, and after having obtained all such necessary rights, it will promptly commence operations for the construction of its North Line and pursue the construction thereof with due diligence to the end that it will be ready to commence the delivery of natural gas to Buyer at the earliest practicable date. Promptly upon the completion of the construction of its North Line it will commence the construction of its West Line and pursue the construction thereof with due diligence to the end that it will be ready to commence the delivery of natural gas through said line to Buyer at the earliest practicable date.

[fol. 641]

### Article III

Buyer agrees that:

A. Promptly after execution of this contract it will, with due diligence and effort, apply for all necessary permits and authorizations from governmental authorities for changing the service in its Field of Service to natural gas, and for the construction of the necessary pipe lines to connect its own transmission systems and those of the Seller, to the distribution systems in its Field of Service, and for the approval of selling rate schedules satisfactory to the Buyer. Upon obtaining such necessary rights satisfactory to the Buyer, it will give notice to the Seller as required in Paragraph H of Article II hereof.

B. Upon notice from Seller that it has obtained all necessary grants, rights and permits, and of the approximate date when it will be ready to furnish service, Buyer will promptly commence the construction of the pipe lines and connections to be used in connection with the delivery of gas hereunder and complete the construction thereof at approximately the same time that Seller completes the construction of its requisite pipe lines and facilities.

C. It will make such enlargements and extensions to its distribution systems as may be necessary to adequately supply its customers and to meet the demands of additional customers it can profitably serve.

D. It shall deliver into Seller's North Line at Buyer's Point of Delivery, gas from the Michigan fields of the quality and in the quantities and at the rates of delivery necessary so that, when Seller has made its deliveries under the terms and conditions herein, the requirements of the Field of Service shall be met.

E. Upon due notification in writing by Seller that it has completed all the necessary facilities for the delivery of gas to any one of the Points of Delivery as hereinafter designated, Buyer will proceed with due diligence to make all the necessary adjustments and changes in its distribution facilities and in its customers' appliances in that part of its Field of Service supplied from that Delivery Point, in order to convert such facilities and appliances to the use of natural gas, and shall complete such adjustments within a period of one hundred twenty (120) days following such notification, and thereafter Buyer shall purchase and receive from Seller at the rates and under the terms and conditions hereinafter set forth the natural gas necessary to furnish Buyer's day to day requirements from Seller for resale and distribution to all consumers of gas in that part of Buyer's Field of Service to be served from such Point of Delivery and distribute straight natural gas to all of its customers in that part of its Field of Service. This procedure will be continued until its entire Field of Service has been connected and changed over to natural gas service.

F. It will install, maintain and operate at its own expense, meters, metering equipment, regulators and calorimeters necessary to measure the quantity, quality and to regulate the pressure of all gas supplied by it from the Michigan fields and delivered by it into Seller's line from time to time.

G. The gas delivered by it into Seller's line or lines from time to time shall conform in all respects to the same standards of purity and quality (except as to heating value) provided for in Paragraph C of Article II hereof with respect to gas delivered by Seller.



[fol. 643]

## Article IV

It is mutually agreed that:

A. Seller's Points of Delivery:

1. Seller's Points of Delivery shall be at the outlet sides of measuring stations to be constructed by Seller, as follows:

(i) for the Flint Division at a point to be mutually agreed upon at or near the corporate limits of the City of Flint;

(ii) for the Pontiac Division at a point to be mutually agreed upon at or near the corporate limits of the City of Clawson;

(iii) for the Owosso Division at or near the point of intersection of Seller's North Line with Buyer's transmission line used in serving the Owosso Division;

(iv) for the Jackson Division at a point to be mutually agreed upon at or near the corporate limits of the City of Jackson;

(v) for the Battle Creek Division at a point to be mutually agreed upon at or near the corporate limits of the City of Marshall;

(vi) for the Kalamazoo Division at a point to be mutually agreed upon at or near the corporate limits of the City of Kalamazoo.

2. Other Stations and Points of Delivery will be established where necessary by mutual agreement.

[fol. 644] B. Buyer's Points of Delivery:

1. Buyer's Point of Delivery shall be at the outlet of its Meter Station on its own transmission line at the point of its connection with Seller's pipe line located approximately as shown on map, Exhibit A, approximately eight (8) miles west of Zilwaukee, Michigan, and Buyer will at such point deliver gas from the Michigan fields into Seller's line. Delivery of such Michigan gas shall be made by Buyer against the varying working pressures carried in Seller's North Line from time to time; provided however that Seller will regulate the quantities of gas delivered by Seller into its North Line to conform to Buyer's instructions from day to day, which said instructions shall not be

of such character as to preclude Seller from the full and efficient use of its said North Line for all purposes for which Seller may use said line. In order to enable Buyer to deliver such quantity of Michigan gas into said line as Buyer may desire Seller will install, operate and maintain a meter and regulator station on its North Line at a point near but south of the Pontiac Division lateral or takeoff.

2. Other Stations and Points of Delivery may be established by Buyer by mutual consent of Buyer and Seller.

#### C. Treatment of gas before delivery:

With respect to the gas delivered by either party hereunder, subject to the standards and quality and purity elsewhere herein provided, such delivering party (a) may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane or other hydrocarbons (excepting methane) from said natural gas before delivery thereof; and (b) may subject or permit the subjection of the gas to compression, cooling, cleaning or other processes [fol. 645] to such an extent as may be required in its transmission from the wells to the Points of Delivery.

#### D. Determination of Quantities Delivered:

The quantity of gas delivered by Seller to Buyer shall be determined, for billing purposes, by deducting from the total number of therms delivered by Seller through all of Seller's meters located at Seller's Points of Delivery the sum of (a) the total number of therms delivered by Seller to Buyer under separate contracts and (b) the total number of therms delivered by Buyer to Seller through Buyer's meter at Buyer's Point of Delivery and any others later installed, which quantity is hereinafter referred to as Seller's "net gas deliveries."

#### E. Quantities Deliverable:

1. Seller shall deliver to Buyer and Buyer shall receive from Seller, natural gas (including gas delivered by Buyer into Seller's line) to cover all of Buyer's gas requirements for distribution and sale to any and all of its present and future customers in Buyer's Field of Service during the term of this agreement, provided that Seller shall not be required to supply hereunder in any one day net gas de-

liveries in excess of two hundred fifty thousand (250,000) therms which constitutes Seller's maximum obligation under this contract.

2. The minimum quantity of net gas deliveries in therms which Buyer shall take and pay for from Seller during any year while this agreement is in force (the first year to be the twelve months commencing with the first day of the month following the date of initial delivery hereunder), is seventy (70) per cent (for the first or second year of this [fol. 646] Agreement this minimum may be as low as sixty-eight (68) per cent but with the obligation to make up any deficiency in therms the next year, the making up of which deficiency shall not operate to increase Buyer's obligation in per cent hereunder) of the total gas (including gas delivered by Buyer into Seller's lines) delivered hereunder to Buyer during that year; provided, however, that if at any time additional gas from Michigan fields becomes available to Buyer and Buyer notifies Seller that it desires to supply a larger percentage of natural gas from Michigan fields than it supplied in the immediately preceding year, Seller's net gas deliveries may be limited to the quantity in therms supplied to the Buyer by the Seller in the immediately preceding year or fifty-seven million five hundred thousand (57,500,000) therms, whichever is the greater.

#### F. Service to Consumers:

The requirements of all present and future consumers of natural gas in Buyer's Field of Service shall be supplied by Buyer, but in the event that there is a prospective Special Industrial Customer in Buyer's Field of Service which Buyer cannot serve when purchasing gas from Seller at the rates provided for under this Agreement, then Seller, if in its sole judgment with respect to costs, volume, and other load characteristics it has natural gas available for such customer, shall sell to Buyer and Buyer shall purchase from Seller natural gas for resale to such customer for a term not exceeding three (3) years, and at a price to be agreed upon, which price shall not be greater than eighty (80) per cent of the amount per therm to be received by Buyer for such gas, but in no event shall the price be less than the commodity price in Article IV, Paragraph H, Sub-paragraph b of this Agreement.



[fol. 647] G. Measurements:

1. The sales unit of the gas deliverable under this agreement shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the volume of gas delivered, expressed in number of cubic feet measured and corrected as herein-after set forth, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

3. The unit of volume for the purpose of measurement and for the determination of the total heating value shall be one (1) cubic foot of gas saturated with water vapor at a base temperature of sixty (60) degrees Fahrenheit and at a base pressure equal to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(a) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the Points of Delivery above sea level or variations in such atmospheric pressure from time to time.

(b) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetic average of the temperature recorded each twenty-four (24) hour day shall be used in computing measurements.

(c) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by approved [fol. 648] methods at the beginning of delivery of gas and thereafter monthly as near the first of the month as practicable, or at such other times as is found necessary for correct measurement.

(d) The deviation of the natural gas from Boyle's Law at the pressures under which said natural gas is delivered from Seller to Buyer hereunder (as well as the Michigan gas delivered by Buyer into Seller's line) shall be determined by joint tests at intervals of three months or at such other intervals as is found necessary in practice. The apparatus and method to be used in making said tests shall be in accordance with the recommendations of the National

Bureau of Standards of the Department of Commerce. Each test shall determine the correction to be used in computations in the measurement of natural gas delivered until the next test.

(e) The total heating value of the gas per cubic foot shall be determined by taking the arithmetic average of the heating value as recorded by the recording calorimeters of Buyer and Seller located as follows:

Buyer's calorimeter to be located at Buyer's Point of Delivery or at such other place as may be agreed upon between the parties.

Seller's calorimeter located at its Glenarm, Illinois Compressor Station or at such other place as may be agreed upon between the parties, provided that, if at any time the source of gas delivered by Seller to Buyer hereunder shall have changed so that the record of said calorimeter no longer reflects the heating value of gas delivered by Seller into its North and West Lines as hereinbefore defined, then Seller shall install, operate [fol. 649] and maintain a calorimeter at such location as will result in a true recordation of the heating value of such gas deliveries.

Such recording calorimeters shall be checked twice each month or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by the National Bureau of Standards and in accordance with method recommended by that Bureau.

4. Each party may install, maintain and operate such check measuring equipment as it shall desire, provided that such check meters and equipment shall be so installed as not to interfere with the operation of the meters of the other party at or near the Points of Delivery. Each party shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by the employees of the owner of such check measuring equipment.

5. The parties hereto shall have the right to be present at their election at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjust-

ing done in connection with the other's measuring equipment used in measuring or check measuring deliveries hereunder and each of the parties shall advise the other of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the owner, but upon request either party will submit to the other such records and charts, together with the calculations therefrom, for the other's inspection and certification, sub-[fol. 650] ject to return within ten (10) days after receipt thereof.

(a) Reasonable care shall be exercised by each party in the installation, maintenance, and operation of regulating equipment so as to avoid, so far as practicable, any inaccuracy of the gas volume determinations. All meters shall be so located and protected as to assure within practicable limits freedom from pulsations, vibrations, or surges at the meter or meters from any cause.

(b) All installations of measuring equipment applying to or affecting deliveries hereunder, shall be made in such manner as to permit an accurate determination of the quantity of gas to be delivered and ready verification of the accuracy of measurement.

(c) The meters at the Points of Delivery shall be read at seven o'clock Eastern Standard Time, in the morning of each day or as near to that time as practical operating conditions will permit.

6. If, for any reason, meters are out of service or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service or out of repair shall be estimated and agreed upon on the basis of the best data available, using the first of the following methods which is feasible:

(a) By using the registration of any check meter or meters if installed and accurately registering;

(b) By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or



[fol. 651] (c) By estimating the quantity of delivery on the basis of deliveries during the preceding periods under similar conditions when the meter was registering accurately.

7. From time to time, and at least once each month, on a date as near the first of the month as practicable, the accuracy of the measuring equipment at or near the Points of Delivery shall be verified by the owners of said measuring equipment, and, if requested, in the presence of representatives of the other party. If at any time either party shall notify the other party that it desires a special test of any meter, the parties hereto shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representatives present.

8. If, upon any test, measuring equipment is found to be not more than two (2) per cent fast or slow, previous readings of such equipment shall be considered correct in computing the deliveries of gas hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon any test, any measuring equipment shall be found to be inaccurate by an amount exceeding two (2) per cent at a reading corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous reading of such equipment shall be corrected to zero error, for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

[fol. 652] 9. Each party hereto shall cause to be preserved for a period of at least five (5) years all test data, charts and other similar records. Upon request these shall be made available to the other party.

#### H. Rate and Computation of Bills:

Monthly bills for net gas deliveries by Seller to Buyer

D of Article IV hereof, shall be computed on the basis of a demand charge plus a commodity charge as follows:

a. Demand Charge.

For each month a sum equal to thirty-eight (38) cents multiplied by the "Maximum Daily Demand." The term "Maximum Daily Demand" shall mean the greatest number of therms delivered in any one day during the months of December, January, February or March in the twelve months period immediately preceding the end of the current billing month or eighty (80) per cent of the greatest number of therms delivered in any one day during any December, January, February or March prior to the end of the current billing month, whichever is the greater.

b. Commodity Charge.

For each month, a sum equal to one and one-half ( $1\frac{1}{2}$ ) cents multiplied by the total number of therms delivered during such month.

c. Minimum Charge.

Buyer shall also pay Seller two and seventy-five one-hundredths (2.75) cents per therm for that number of therms by which the minimum set forth in sub-paragraph 2 [fol. 653] of paragraph E of Article IV herein exceeds the therms delivered during such year.

d. Minimum Rate.

In no event shall Buyer pay Seller less than two and seventy-five one hundredths (2.75) cents per therm for the net gas deliveries hereunder during any year.

e. Interim Rate.

Buyer contemplates changing over its distribution system in each of its Divisions and of its customers appliances therein gradually and in sections over a period of time, and during said period of changeover Buyer may also require gas for purging its lines and for purposes other than resale. The price of all gas delivered by Seller to Buyer, in any one of Buyer's Divisions between the date of initial delivery of gas by Seller to Buyer hereunder for

such Division and the first of the month following the completion of such changeover in such Division shall be assumed to be three (3) cents per therm; and if such changeover in such Division shall be completed subsequent to the last day of February but prior to the first day of December in any year the price of gas delivered by Seller to Buyer, for resale in such Division between the date of completion of such changeover and the first day of December next following shall also be assumed to be three (3) cents per therm.

#### I. Billing:

1. On or before the fifth day of each month Buyer shall render to Seller a statement showing the total volume and therms delivered each day during the previous month through its meter station at its Point of Delivery into [fol. 654] Seller's lines, together with complete data and computations showing the procedure of determination.

2. On or before the tenth day of each month, Seller shall render or cause to be rendered to Buyer a statement showing the total volume, number of therms and net gas deliveries by Seller to Buyer during each day of the previous month and payment then due from Buyer to Seller with complete data and computations showing the procedure by which such statement was determined, and Buyer shall on or before the twentieth day of each month pay the amount it considers to be correct and undisputed.

3. Should Buyer fail to pay the undisputed part of any bill for gas as rendered by Seller when such an amount is due, interest thereon shall accrue at the rate of five (5) per cent per annum from the due date until date of payment. If such failure to pay continues for thirty days after payment is due, Seller may, in addition to any other remedy it may have hereunder, require Buyer to furnish a good and sufficient Surety Bond satisfactory to Seller conditioned upon the payment of any amounts ultimately found due upon such bills after a final determination, which may be reached either by agreement or judgment of the courts as the case may be.

4. If presentation of bill by Seller is delayed after the tenth day of the month, then the time of payment shall be extended accordingly unless Buyer is responsible for such delay. If Buyer shall find at any time...



months of the date of any statement rendered by Seller hereunder that it has been overcharged in the amount billed in such statement and that Buyer shall have paid such overcharge and shall have made a claim therefor within [fol. 655] sixty (60) days of the discovery thereof, Seller shall refund the principal of such an amount within thirty (30) days of the determination thereof with interest at the rate of five (5) per cent per annum.

5. Any amounts becoming due and payable by Buyer to Seller under and by virtue of the operation of items c and d of Paragraph H, Article IV, shall be included in the bill covering the last month for such annual period.

6. Each of the parties shall have the right to examine at reasonable times, books, records, and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this agreement.

#### J. Force Majeure and Emergencies:

1. Neither party shall be liable in damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

[fol. 656] 2. Such causes or contingencies affecting the performance of this agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve either party from its obligations to make payments of amounts then due hereunder.

3. In case of any emergency creating an occurrence or condition unusual in the ordinary conduct of the business, each party agrees to utilize its full facilities which in its judgment are available for the duration of the emergency, and any demands created thereby resulting in an increased demand charge will be disregarded. The Buyer will maintain and operate its storage holders in a manner that they may be utilized to level out the hourly and daily peak demands on Seller for gas and be available for use in case of temporary failure or diminution of supply of gas delivered by Seller. The Buyer will also maintain its present generating stations in good operating condition and will operate them in case of temporary failure of or diminution in supply of gas delivered by Seller.

#### K. Buyer's Transmission Lines:

Through the performance of this agreement certain of Seller's transmission lines will or may be connected through certain of Buyer's transmission lines with any Michigan gas field or fields that the Buyer has under contract or may secure in the future. Should the Seller either directly or indirectly secure any such field or fields or any interest in the same, for storage or otherwise, Seller may purchase [fol. 657] from Buyer such of said transmission lines connecting such fields with Seller's transmission system as in Seller's judgment may constitute a desirable addition to its system, and Buyer agrees to sell such transmission line or lines to Seller, provided that in Buyer's judgment the same can be sold without interfering with the sale and distribution of natural gas under this agreement or to the areas served with natural or manufactured gas and not covered by this agreement. The price to be paid for the same shall be such as the parties may mutually agree upon.

#### L. Remedies:

1. Buyer may cancel and terminate this agreement upon sixty (60) days' notice should:

(a) Seller be unable to, or fail for a period longer than ninety (90) days, to deliver gas of the standards and British thermal unit content as provided in this agreement, or which would meet the approval of any governmental agency having jurisdiction over the Buyer;

(b) Seller fail for a period of one day in each week for six (6) consecutive weeks, to deliver the quantity of gas which Buyer is entitled to demand under this agreement;

(c) It, or the Seller by reason of any order of court or governmental agency, resisted by all legal means, be prevented from selling and distributing gas in the Field of Service covered by this agreement.

2. Seller may cancel and terminate this agreement upon sixty (60) days' notice should Buyer fail to pay any bill that is not in dispute, as elsewhere provided herein, within [fol. 658] sixty (60) days after the same becomes due.

3. Any cancellation of this agreement shall be without prejudice to the right of the Seller to collect any amount then due it for gas delivered prior to the effective date of the cancellation, subject to any proper counter-claims or setoffs of Buyer and without waiver of any remedy to which the party not in default may be entitled for violation of this agreement.

4. Should Seller at any time fail to deliver gas in volumes and/or at such pressures as Buyer may require up to the limits otherwise herein provided, and if such failure be due to causes outside the scope and provisions of subparagraph 1, Paragraph J of Article IV hereof, Seller shall reimburse and indemnify the Buyer for any reasonable expenses, or loss or damage that it may sustain by reason of such failure, including the expense of putting into operation any gas manufacturing equipment and/or obtaining manufactured gas or natural gas to remedy such deficiency.

5. The remedies herein specifically provided for are cumulative, and in addition to all rights and remedies for specific performance or for damages, including loss of return and profits or otherwise, which either party may have at law or in equity for breach by the other party of any agreement, condition or covenant contained herein, which rights and remedies neither Buyer nor Seller shall in anywise be deemed to have waived either by the express provisions for the foregoing remedies or by the exercise of any thereof; provided, however, that in the event that this agreement be cancelled or terminated by reason of any order of court or governmental agency prohibiting the Buyer from distributing gas or such gas within the area covered by this



[fol. 659] agreement, which has been resisted by all reasonable legal means, there shall be no liability upon the part of either party to the other, excepting such liability as remains unsettled between the parties arising from the sale of gas and such transactions as were had and completed between the parties prior to cancellation.

**M. Miscellaneous:**

1. No modification of the terms and provisions hereof shall be or become effective, except by the execution of supplementary written contracts.

2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. The Buyer shall have no responsibility with respect to any gas in the lines of the Seller until it is delivered to Buyer at the Points of Delivery or on account of anything which may be done, happen or arise with respect to said gas before such delivery, and Seller shall have no responsibility with respect to such gas after its delivery to the Buyer at the Points of Delivery or on account of anything which may be done, happen or arise with respect to said gas after such delivery, except that both Buyer and Seller shall be responsible for the results of their own negligence or that of their employees or agents or of their failure to perform the contract in accordance with its terms. Otherwise than as so excepted, the Buyer shall protect and save harmless the Seller from all claims, damages, suits, acts or things with respect to said gas after the delivery thereof and the Seller shall protect and save harmless the Buyer from all claims, damages, suits, acts or things with respect to said gas before delivery thereof.

[fol. 660] 4. Any company or person which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of the Buyer in its Field of Service, or of the properties of Seller necessary to furnish gas hereunder, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this agreement, but otherwise neither party shall assign this agreement or any of its rights hereunder unless it first

shall have obtained the consent thereto of the other party; provided, however, that if Buyer disposes of any part of its properties less than the whole in its Field of Service, it will, as a condition precedent to such disposal, require the recipient thereof to assume its proportionate share of Buyer's obligations under this contract. In any such event, Seller agrees to appropriately amend this contract and to enter into such separate contract with the recipient of such property as may be necessary to accomplish said purpose and thereupon to the extent that such recipient has assumed Buyer's obligations hereunder Buyer shall be relieved of any further liability.

5. This agreement shall remain in full force and effect for a period of fifteen (15) years, commencing with the first day of the month immediately following the date of initial delivery of gas by Seller to Buyer hereunder and shall continue after the expiration of such period of fifteen (15) years until terminated by either party upon six months' prior written notice to the other.

6. Except as otherwise herein provided any notice, request, demand, statement or bill provided for in this agreement shall be in writing and shall be duly delivered when mailed by registered mail to the Post Office address of either of the parties hereto, as the case may be, as follows:

[fol. 661] Seller: Panhandle Eastern Pipe Line Company

1221 Baltimore Avenue  
Kansas City, Missouri

Buyer: Consumers Power Company  
Jackson, Michigan

or at such other address as either party shall designate by formal written notice in accordance herewith for the purpose, except that routine communications (including monthly statements and payments) shall be duly delivered when mailed by either registered or ordinary mail.

7. This agreement is subject to present and future valid and lawful statutes, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Subject to the foregoing, this

agreement shall be deemed to be a Michigan contract and shall be construed in accordance with the laws thereof.

8. In the event any provision of this contract should finally be adjudged invalid all remaining provisions which in their nature are separable therefrom shall nevertheless remain in full force and effect.

In Witness Whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties)



500

(Here follows 1 map Exhibit 26, folio 662)

See Card 9 for Exhibit 26,  
(Page 500A)

[fol. 663]

## Exhibit 27

Gas contract between Panhandle Eastern Pipe Line Company and the Albion Gas Light Company dated July 7, 1942.

This agreement, made and entered into as of the 7th day of July, 1942 by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Eastern," and The Albion Gas Light Company, a corporation of the State of Michigan, hereinafter referred to as "Gas Company."

Gas Company represents that it owns and operates a distributing system serving manufactured gas in the City of Albion, Michigan and environs, hereinafter referred to as "Albion," and that it is desirous of obtaining from Eastern a supply of natural gas for distribution and resale in Albion.

Eastern represents that it owns natural gas reserves and production facilities in the States of Texas and Kansas and a natural gas transmission pipe line extending from its production areas to a point near the Illinois-Indiana state line, at which point it connects with other transmission facilities, and that Eastern is now engaged in the construction of a natural gas transmission pipe line system in Michigan, one branch of which will be located in the vicinity of Albion, which branch line is hereinafter referred to as the "West Line," through which combined facilities Eastern can assure delivery of natural gas at the Point of Delivery hereinafter mentioned to Gas Company for resale in Albion.

[fol. 664] Now, therefore, in consideration of the mutual covenants and agreements, as herein set forth, the parties hereto covenant and agree as follows:

## Article I

## Definitions

Except where the context otherwise indicates another or different meaning or intent, the following terms are

intended and used and shall be construed to have meanings as follows:

1. The term "Day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at 7:00 o'clock A. M. Eastern Standard Time.

2. The term "Month" shall mean the period beginning at 7:00 o'clock A. M. Eastern Standard Time on the first day of a calendar month and ending at 7:00 o'clock A. M. Eastern Standard Time on the first day of the next succeeding calendar month.

3. The term "Special Industrial Customer" shall mean an industrial customer who purchases gas under a contract providing for the curtailment or interruption of delivery of gas in the event of an insufficiency in the supply of gas available for such delivery.

4. The term "firm gas" shall mean all gas sold and delivered hereunder other than gas for Special Industrial Customers.

5. The term "environs" shall mean contiguous territory immediately outside the corporate limits of Albion, which territory Gas Company can reasonably serve from the distribution mains and extensions thereof of said community.

[fol. 665]

## Article II

### Scope of Agreement

1. Eastern agrees to sell and deliver to Gas Company, and Gas Company agrees to purchase and receive from Eastern, natural gas for the entire gas requirements of Gas Company for distribution and resale to any and all of its present and future customers and for Gas Company's own use in Albion. In no event, however, shall Eastern be required to supply hereunder in any one day more than three hundred thousand (300,000) cubic feet of firm gas.

2. Gas Company agrees promptly to make all reasonable efforts to procure all necessary permits and authorizations from governmental authorities for changing the service in Albion from manufactured to straight natural gas and upon obtaining the same shall notify Eastern thereof. Upon notice from Eastern to the effect that Eastern has completed its West Line and such additional facili-



ties and extensions necessary for delivery of gas sold hereunder at the Point of Delivery hereinafter mentioned, and is ready to commence delivery of gas hereunder, Gas Company agrees to proceed with due diligence to make adjustments of all of its distribution facilities and customers' appliances in Albion necessary to the utilization of natural gas and shall complete such adjustments within a period of one hundred twenty (120) days following such notification and thereafter Gas Company shall distribute straight natural gas to all of its customers in Albion.

3. All deliveries of gas hereunder by Eastern to Gas Company for resale to Special Industrial Customers, as herein defined, shall be subject to curtailment or interruption whenever, in Eastern's judgment, such gas is needed [fol. 666] to meet the requirements of customers receiving service, directly or indirectly, from Eastern's pipe line system, under classifications or contracts contemplating an uninterrupted supply of gas.

4. Whenever Gas Company has a prospective Special Industrial Customer, Gas Company shall submit to Eastern, for its examination, any contract or arrangements which Gas Company proposes to make with such customer and shall also furnish Eastern with the name of such customer, a description of the purpose or purposes for which such gas is to be utilized, the business in which the customer is engaged and estimates of monthly and maximum daily gas requirements. If Eastern indicates to Gas Company, in writing, its willingness to supply Gas Company with gas for resale to such customer, then Eastern thereafter shall sell and deliver gas to Gas Company for the purpose of resale to such proposed customer upon the terms and conditions of this agreement governing sales and deliveries of gas for such purposes and for such customers.

5. Inasmuch as the ability of Eastern to deliver the natural gas herein agreed to be sold and delivered to Gas Company is dependent upon the completion of Eastern's West Line and such additional facilities and extensions necessary for delivery of gas sold hereunder at the Point of Delivery hereinafter mentioned, it is hereby expressly stipulated that if for any reason said line and extension are not completed prior to the 1st day of October, 1942, then this agreement, anything herein to the contrary not-

withstanding, shall become null and void and all rights and obligations herein vested in or assumed by the parties shall cease and determine unless the parties mutually agree upon a further extension of time.

[fol. 667]

### Article III

#### Term of Agreement

This agreement shall extend for a period of fifteen (15) years, commencing with the first day of the month immediately following the date of initial delivery of gas by Eastern to Gas Company hereunder and shall continue after the expiration of such period of fifteen (15) years until terminated by either party upon six (6) months' prior written notice to the other.

### Article IV

#### Quality

1. Eastern agrees that the gas delivered hereunder shall be natural gas; provided, however, that:

(a) Eastern may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane, or other hydrocarbons (except methane) from said natural gas;

(b) Eastern may increase or decrease the heat content of said natural gas before delivery thereof to Gas Company; provided that such increase or decrease will not result in a total heating value above one thousand sixty (1060) or below nine hundred fifty (950) British thermal units per cubic foot;

(c) Eastern may subject or permit the subjection of said natural gas to compression, cooling, cleaning or other processes to such an extent as may be required in its transmission from the wells to the Point of Delivery.

2. Eastern agrees that the gas delivered hereunder shall be merchantable, and in so far as practicable:

[fol. 668] (a) Shall be commercially free from solid or liquid matter, dust, gum or gum-forming constituents;

(b) Shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet;

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet;

(d) Shall not contain an amount of moisture exceeding that corresponding to saturation at the temperature and pressure of the gas in the pipe line at a point approximately fifty (50) feet in advance of the meter inlet header located at or near the Point of Delivery, and water shall not be present in liquid phase.

## Article V

### Measurements

1. The sales unit of the gas deliverable hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

2. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas, in British thermal units per cubic foot, and by dividing the products by one hundred thousand (100,000).

3. The volume and the total heating value, of the gas delivered hereunder, shall be determined as follows:

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, [fol. 669] shall be one (1) cubic foot of gas saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The total heating value of the gas, per cubic foot, shall be determined by taking the arithmetic average of the heating value as recorded by the recording calorimeter, of Eastern located at its Glenarm Compressor Station or at such other place as may be agreed upon between the parties.

(c) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual



elevation or location of the Point of Delivery above sea level or variations in such atmospheric pressure from time to time.

(d) Where the installation of a recording thermometer is provided, at the Point of Delivery, the arithmetic average of the temperature of the gas, flowing through the meters, as recorded, shall be used in computing gas volumes; where such installation is not provided the temperature of the gas shall be assumed to be fifty (50) degrees Fahrenheit.

(e) The deviation from Boyle's Law, the specific gravity and relative humidity of the gas delivered hereunder shall be determined, by approved methods, at the beginning of delivery of gas and with such reasonable frequency thereafter as is found expedient in practice, and where applicable such determinations shall be used in computing gas volumes.

[fol. 670]

## Article VI

### Measuring Equipment

1. Gas Company shall cause to be provided in all contracts with Special Industrial Customers of Gas Company that Eastern shall have the right, when accompanied by a representative of Gas Company, at all times during business hours, to inspect the measuring equipment and recording equipment of Gas Company pertaining to sales to such Special Industrial Customers.

2. Eastern will install, maintain and operate, at its own expense, at or near the Point of Delivery, a meter or meters and other necessary measuring equipment by which the volume of gas delivered hereunder shall be measured.

3. Gas Company may install, maintain and operate such check measuring equipment as it shall desire, provided that such equipment shall be so installed as not to interfere with the operation of Eastern's measuring equipment at or near the Point of Delivery. Eastern shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Gas Company.

4. Each party shall have the right to be present at the time of any installing, reading, cleaning, changing, repair-

ing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring deliveries hereunder, and each party shall advise the other of any intended major maintenance operation sufficiently in advance in order that the other party [fol. 671] may conveniently have its representative present. The records from such measuring equipment shall remain the property of the owner, but upon request will submit to the other such records and charts, together with calculations therefrom, for the other's inspection and verification, subject to return within ten (10) days after receipt thereof.

5. All installations of measuring equipment, applying to or affecting deliveries hereunder, shall be made in such manner as to permit an accurate determination of the quantity of gas delivered and ready verification of the accuracy of measurement. Reasonable care shall be exercised by each party in the installation, maintenance and operation of pressure regulating equipment so as to avoid, so far as practicable, any inaccuracy in the determination of the volume of gas delivered hereunder.

6. In the event a meter is out of service, or registering inaccurately, the volume of gas delivered hereunder shall be estimated:

(a) By using the registration of any check meter or meters if installed and accurately registering or, in the absence of (a);

(b) By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation or, in the absence of both (a) and (b) then:

(c) By estimating the quantity of delivery by deliveries during periods under similar conditions when the meter was registering accurately.

7. The accuracy of Eastern's measuring equipment shall be verified by Eastern at reasonable intervals, and, if re- [fol. 672] quested, in the presence of representatives of Gas Company, but Eastern shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event either party shall notify the other that it desires a special test of any

measuring equipment the parties shall cooperate to secure a prompt verification of the accuracy of such equipment.

8. If, upon test, any measuring equipment, including recording calorimeter, is found to be in error not more than two (2) per cent, previous recordings of such equipment shall be considered correct in computing deliveries hereunder; but such equipment shall be adjusted at once to record accurately. If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

9. Each party shall preserve for a period of at least five (5) years all test data, charts and other similar records.

## Article VII

### Rate and Computation of Bills

For all gas purchased by Gas Company from Eastern hereunder, the price shall be as follows:

[fol. 673] A. Firm Gas Deliveries as Defined in Section 4 of Article I

#### Part 1.

Three (3) cents per therm for all gas delivered hereunder during the four (4) months' period June to September, both inclusive, of any year.

#### Part 2.

For all gas delivered hereunder, each month, during the eight (8) months' period October to May, both inclusive:

(a) Three (3) cents per therm for the number of therms equal to the average number of therms delivered per day during the immediately preceding four



(4) months' period June to September, both inclusive, multiplied by the number of days in the current billing month.

(b) Four (4) cents per therm for all gas delivered in excess of the quantity specified in paragraph (a) of this Part 2.

#### Interim Rate for First Deliveries Made Under and Pursuant to Section 1 of Article II

In the event that deliveries of gas hereunder are commenced subsequent to June first and prior to September first of any year the daily average deliveries from the date of initial delivery to and including September thirtieth next succeeding shall be used in determining the quantity of gas to be paid for at the rate of three (3) cents per therm during the eight (8) months' period, October to May, next succeeding.

[fol. 674] In the event the date of initial delivery of gas occurs during the period between September first and June first next succeeding, the quantity of gas to be paid for at the rate of three (3) cents per therm during the eight (8) months' period October to May, next succeeding shall be assumed to be eight-tenths (.8) of Eastern's firm deliveries hereunder, the balance of such firm deliveries during said eight (8) months' period to be paid for at the rate of four (4) cents per therm.

#### B. Deliveries for Resale to Special Industrial Customers as Defined in Section 3 of Article I

Eighty (80) percent of the amounts billed by Gas Company to each of its customers; provided, however, that the price to be paid, by Gas Company to Eastern, shall not be less than two (2) cents per therm for gas delivered for resale to each customer.

### Article VIII

#### Billing

1. On or before the fifth (5th) day of each month, Gas Company shall render to Eastern a statement showing, for the preceding calendar month, the number of cubic feet of natural gas (based on the unit of volume specified in

Article V hereof) and the quantity of therms calculated from its meter readings and charts to have been delivered to each of its Special Industrial Customers and said statement shall include the amounts billed by Gas Company to its Special Industrial Customers.

2. Eastern shall, on or before the tenth (10th) day of each month, render to Gas Company a statement showing [fol. 675] the total volume and total number of therms delivered hereunder, during the preceding month and the payment then due from Gas Company to Eastern, with complete data and computations showing the procedure by which such statement was determined.

3. Each party shall have the right to examine at reasonable times books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this agreement.

## Article IX

### Payments

1. Gas Company agrees to pay Eastern, at its designated office on or before the fifteenth (15th) day of each month, for the natural gas delivered hereunder during the preceding month, and billed by Eastern in statement for said month according to the measurements, computations and prices herein provided.

2. Should Gas Company fail to pay the amount of any bill for gas delivered hereunder, as herein provided, when such amount is due, interest thereon shall accrue at the rate of six (6) per cent per annum from the due date until the date of payment. If such failure to pay continues for thirty (30) days after payment is due, Eastern in addition to any other remedy it may have hereunder, may suspend further delivery of gas until such amount is paid; provided, however, that if Gas Company in good faith, shall dispute the amount of any such bills or parts thereof and shall pay to Eastern such amounts as it concedes to be correct and at any time thereafter within thirty (30) days of a demand made by Eastern shall furnish a good and sufficient surety bond, in the amount and with sureties satisfactory to Eastern, conditioned upon the pay-

ment of any amounts ultimately found due upon such bills after a final determination, which may be reached either by agreement or judgment of the courts as may be the case, then Eastern shall not be entitled to suspend further delivery of gas unless and until default be made in the conditions of such bond.

3. If presentation of a bill by Eastern is delayed after the tenth (10th) day of the month, then the time of payment shall be extended accordingly unless Gas Company is responsible for such delay.

4. In the event an error is discovered in the amount billed in any statement rendered by Eastern such error shall be adjusted, within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty (60) days from the date of discovery of such error, but in any event within twelve (12) months from the date of such statement.

## Article X

### Point of Delivery

The Point of Delivery for all gas to be delivered by Eastern to Gas Company hereunder shall be on the outlet side of the measuring station to be constructed by Eastern at or near the Northern corporate limits of Albion, at a location to be mutually agreed upon by the parties hereto.

## Article XI

### Possession of Gas

1. As between the parties hereto, Eastern shall be deemed to be in control and possession of the gas deliverable hereunder until it shall have been delivered to Gas Company [fol. 677] at the Point of Delivery, after which Gas Company shall be deemed to be in control and possession thereof.

2. Gas Company shall have no responsibility with respect to any gas deliverable hereunder until it is delivered to Gas Company, or on account of anything which may be done, happen or arise with respect to said gas before such delivery, and Eastern shall have no responsibility with respect to such gas after its delivery to Gas Company,



or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

## Article XII

### Pressure

Eastern agrees to use due care and diligence to furnish gas hereunder at such uniform pressure as Gas Company may require, up to but not exceeding one hundred (100) pounds to the square inch gauge pressure at the Point of Delivery. Gas Company agrees to install, operate and maintain such regulating devices as may be necessary to regulate the pressure of the gas after delivery to Gas Company.

## Article XIII

### Warranty of Title to Gas

Eastern warrants generally the title to all gas delivered hereunder and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims.

[fol. 678]

## Article XIV

### Force Majeure

1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

2. Such causes or contingencies affecting the performance of this agreement by either party, however, shall not relieve it of liability in the event of its concurring negli-

gence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of this agreement relieve either party from its obligations to make payments of amounts then due hereunder.

## Article XV

### Miscellaneous

1. No modification of the terms and provisions hereof shall be or become effective, except by the execution of supplementary written contracts.

[fol. 679] 2. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

3. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Eastern or Gas Company, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this agreement, but otherwise neither party shall assign this agreement or any of its rights hereunder unless it first shall have obtained the consent thereto of the other party.

4. Except as herein otherwise provided any notice, request, demand, statement or bill provided for in this agreement, or any notice which either party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by registered mail to the Post Office Address of either of the parties hereto, as the case may be, as follows:

Eastern: Panhandle Pipe Line Company, 1221 Baltimore Avenue, Kansas City, Missouri.

Gas Company: The Albion Gas Light Company, 101 West Second Street, Ashland, Wisconsin.

or at such other address as either party shall designate by formal written notice. Routine communications, in-

cluding monthly statement and payments, shall be considered as duly delivered when mailed by either registered or ordinary mail.

[fol. 680] 5. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction.

In Witness Whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties)

#### Exhibit 28

Application dated December 10, 1942, by Panhandle Eastern Pipe Line Company to Federal Power Commission re service to Albion Gas Light Company.

Comes now Panhandle Eastern Pipe Line Company, hereinafter referred to as "Applicant," and pursuant to the requirements of Section 7 of the Natural Gas Act, as amended, shows the following:

Applicant is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1221 Baltimore Avenue, Kansas City, Missouri, and owns and operates, either directly or through its wholly owned subsidiaries, Michigan Gas Transmission Corporation and Illinois Natural Gas Company, which in effect are operating arms or departments of Applicant, an integrated natural gas pipe line system situated in the states of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio and Michigan. Said companies are engaged in the transportation and sale of natural gas in interstate [fol. 681] commerce for direct use and for resale for ultimate public consumption for domestic commercial and industrial uses. For a more complete description of the pipe line system, gas reserves, operations and business of Applicant and its wholly owned subsidiaries, Michigan Gas Transmission Corporation and Illinois Natural Gas Com-



pany, Applicant respectfully refers the Commission to the application of itself and said wholly owned subsidiaries under Section 7c of the Natural Gas Act, as amended, now pending before this Commission under Docket No. G-254, which application is herein incorporated by reference.

Applicant has heretofore, on the 7th day of July, 1942, entered into a contract with The Albion Gas Light Company, which owns and operates a distributing system serving manufactured gas in the City of Albion, Michigan and environs, under the terms of which Applicant agrees to furnish The Albion Gas Light Company, a supply of natural gas for its entire gas requirements not to exceed three hundred thousand (300,000) cubic feet of firm gas in any one day. Said contract is on file with the Federal Power Commission as FPC Rate Schedule No. 58. Applicant has been advised that there are many manufacturing plants in the immediate area of Albion working exclusively on ordnance and other defense work, the fuel requirements of which, except as supplemented by butane, are being furnished by The Albion Gas Light Company. Several manufacturing plants have expressed their eagerness to use natural gas in so far as possible. Among those so expressing themselves by written requests are Lonergan Manufacturing Company, Gale Manufacturing Company, Albion Malleable Iron Company, Union Steel Products Company, [fol. 682] Albion Foundry & Machine Company, all of Albion, Michigan.

Applicant is advised that the production plant of The Albion Gas Light Company has now far outlived the ordinary life expectancy of such equipment and physically is in critical condition and that to rebuild its plant would require materials and labor which are not now available to it.

Upon a formal application to the War Production Board, The Albion Gas Light Company has been granted permission by it, to receive and Applicant to deliver 150 MCF of gas in any single day subject to provisions of Paragraph (c) of Limitation Order L-31 as amended. A copy of the telegraphic decision of War Production Board is hereto attached and made a part hereof.

In order to alleviate the urgent need of the local distributing company and comply with the aforesaid contract insofar as permitted by the War Production Board, it will be necessary to lay a two inch pipe line in Township 3 South, Range 4 West, Calhoun County, Michigan from Applicant's now existing twelve inch line known as its Michigan West Line, a distance of approximately one and one-quarter ( $1\frac{1}{4}$ ) miles in a northerly direction to the city limits of Albion.

The only materials to be used in the construction of this line will be the necessary two inch pipe, fittings, valves, meters, regulators and metering and regulator station, all of which materials and supplies are either now in the stock rooms of Applicant or have been ordered under preference ratings sufficiently high, in Applicant's opinion, to secure prompt delivery.

[fol. 683] Applicant further represents that it now has under contract a construction company which is completing other work in this immediate area and has available machinery and equipment that could start work on this proposed line and complete it without delay at a minimum of expense whereas if said contractor completes its present contract and removes its construction machinery and equipment from this area, which Applicant is advised is contemplated, the desired construction will be greatly delayed and the cost of construction of the said line will be materially increased. If granted a certificate, Applicant would immediately begin the actual construction of the line and would reasonably expect to complete the project within a period of fifteen days or less as rights of way grants have been procured from landowners and preliminary surveys of the route have been made.

Applicant would reasonably expect to supply, through the facilities for which construction is requested, an estimated maximum of 150 MCF daily and minimum daily of 75 MCF and for the first year an estimated total of 37,000 MCF with estimated revenue of \$11,840. On the basis of the above deliveries, Applicant estimates that its costs would be approximately \$5,150 in fixed charges and \$2,590 in operating expense, annually.

Applicant estimates the cost of the proposed pipe line and appurtenances to be as follows:

Rights of Way and damages	\$ 1,200
Pipe, Valves, Fittings and other materials	5,400
Welding, pipe laying and other construction work	4,200
<b>Total</b>	<b>\$10,800</b>

[fol. 684] All correspondence or communications in regard to the within application are to be addressed to G. J. Neuner, Vice President of Applicant, at 1221 Baltimore Avenue, Kansas City, Missouri.

Wherefore, Applicant prays that Federal Power Commission issue to it a Certificate of Public Convenience and Necessity under Section 7 of the Natural Gas Act as amended, for the construction of a two inch pipe line, as aforesaid, from a point on its twelve inch line in Township 3 South, Range 4 West, Calhoun County, to the south city limits of the City of Albion, Michigan, a distance of approximately one and one-quarter miles, and for the transportation and sale of natural gas to The Albion Gas Light Company, as aforesaid.

Applicant further prays that pending the determination of this application, this Commission issue to it, without notice or hearing, a temporary Certificate of Convenience and Necessity authorizing the aforesaid construction, transportation and sale in order that the emergency may be complied with promptly.

(Duly signed and verified under oath)

[fol. 685]

Western Union

Washington, D. C., December 7, 1942

10:33 A. M.

Panhandle Eastern Pipe Line Company, 1221 Baltimore Avenue, Kansas City, Missouri.

Reference L-31 you are permitted to deliver 150 MCF gas in any single day to Albion Gas Light Company, Albion,



Michigan subject to provisions of paragraph (c) Limitation Order L-31 as amended.

Ernest Kanzler, Director General, For Operations War Production Board.

### Exhibit 29

Order of Federal Power Commission Issuing Temporary Certificate of Public Convenience and Necessity for Service to Albion Gas Light Company, dated March 27, 1943

Upon consideration of the application for a temporary certificate of public convenience and necessity filed by the Panhandle Eastern Pipe Line Company on December 10, 1942, to authorize the construction, installation and operation of the facilities hereinafter described, and other material in the Commission's records and files pertaining to the applicant; and

[fol. 686] - It appearing to the Commission that:

(a) Applicant and its wholly-owned subsidiaries operate an integrated natural gas pipeline system, and are engaged in the transportation and sale of natural gas in interstate commerce for direct use and for resale for ultimate consumption for domestic, commercial and industrial uses;

(b) Applicant seeks a temporary certificate of public convenience and necessity, pursuant to Section 7 (c) of the Natural Gas Act, as amended, authorizing the applicant to construct and operate the following facilities for the transportation and sale of natural gas to The Albion Gas Light Company;

A pipeline approximately 1¼ miles in length extending from a point on the applicant's existing Michigan West Line, in Calhoun County, Michigan, in a northerly direction to the city limits of Albion, Michigan, to be constructed of 2-inch pipe, together with valves, fittings, regulators, meters and other equipment and appurtenances necessary for the operation of the line and for the furnishing of natural gas to The Albion Gas Light Company;

(c) The applicant filed a petition with the War Production Board for a preference rating for the pipe

and other materials to construct the line described in paragraph (b) above, and the Commission is advised that such preference rating was issued on November 2, 1942;

The Commission finds that:

(1) Applicant is engaged in the transportation of natural gas in interstate commerce and the sale in [fol. 687] interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or other use, and is a natural gas company within the meaning of the Natural Gas Act;

(2) By reason of the present national emergency, the public interest requires the issuance of a temporary certificate of public convenience and necessity authorizing the applicant to construct, install and operate the facilities described in paragraph (b) above;

The Commission orders that:

A temporary certificate of public convenience and necessity be and it hereby is issued for a period of five years or for the duration of the national emergency, whichever is longer, authorizing the applicant to construct, install and operate facilities described in paragraph (b) above, and as shown in the application and for the transportation and sale of natural gas to The Albion Gas Light Company, upon the following express terms and conditions:

(i) The construction and installation of the facilities hereby authorized shall be commenced on or before April 1, 1943, and completed on or before May 1, 1943;

(ii) Applicant shall submit a statement to the Commission under oath on April 16, 1943, setting forth fully the status of the construction and installation of the facilities covered by this authorization;

(iii) Applicant shall report in writing to the Commission under oath the completion date of the unit [fol. 688] above described, together with the date that the same is put into service;

(iv) Nothing herein is to be construed as indicating that the Commission has authorized or that it

will authorize the construction and operation of the facilities described in an application filed February 25, 1943, by Panhandle Eastern Pipe Line Company and its wholly owned subsidiaries, Illinois Natural Gas Company, and Michigan Gas Transmission Corporation, Docket No. G-452;

(v) The issuance of this temporary certificate is without prejudice to the authority of the Commission with respect to rates, valuation, costs, service, accounts or any other matters whatsoever in any proceeding now pending before the Commission or that may come before the Commission with respect to said applicant, or the facilities herein authorized to be constructed, installed and operated; and nothing herein shall be construed as an acquiescence by the Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the applicant, nor shall it be considered as a determination of service area under Section 7(f) of the Natural Gas Act as amended;

(vi) Upon the failure of the applicant to comply with any of the terms and conditions herein, this temporary certificate shall cease to have any force or effect.

[fol. 689]

Exhibit 30

Industrial Gas Contract, Dated December 30, 1943, Between Panhandle Eastern Pipe Line Company and Albion Malleable Iron Company.

This agreement, made and entered into as of the 30th day of December, 1943, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller," and Albion Malleable Iron Company, a corporation of the State of Michigan, hereinafter referred to as "Buyer":

Seller owns and operates a natural gas transmission system, used in the transmission and sale of natural gas, and has available certain quantities of natural gas which Seller desires to transport, sell and deliver to Buyer.

Buyer desires to purchase from Seller certain quan-



titles of such natural gas for use in Buyer's plant located at Albion, Michigan.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

1. Seller agrees to transport, sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas for the entire fuel requirements of two (2) Continuous Malleable Iron Annealing Furnaces, four (4) Batch Type Malleable Iron Annealing Furnaces, two (2) Large Core Ovens, Ladle Heaters and other miscellaneous uses incidental to the production of malleable castings, at Buyer's Plant in Albion, Michigan, subject to the terms and conditions hereof, for the term of three (3) years beginning with the date of first delivery of gas hereunder, and at the price of three and fifty-five one hundredths (3.55) cents per therm.

2. Seller shall render bills on or before the 10th day of each calendar month for all gas delivered hereunder during the preceding month.

3. Buyer agrees to pay Seller on or before the 15th day of each calendar month for all gas delivered hereunder during the preceding month.

4. Seller will add to and include in bills rendered to Buyer hereunder the amount of any tax, with respect to the sale or delivery of gas hereunder, which Seller is now or hereafter required by law to collect from Buyer and pay to any governmental agency.

If, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, sales or excise tax, with respect to the natural gas sold and delivered hereunder, in excess of such tax as is now levied and imposed and which Seller is not required by law to collect from Buyer, the amount of such increased tax shall be added to the price to be paid by Buyer to Seller hereunder; provided, however, that in the event the amount of such additional tax, in the judgment of Buyer, shall operate to make the price of gas prohibitive to Buyer, then Buyer shall have the right and privilege of cancelling and terminating this contract, and thereupon all obligations and liabilities of the parties hereunder shall cease, unless Seller shall notify Buyer in writing of its election

to assume and pay such additional tax; provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

[fol. 691] 5. In the event Buyer shall fail to pay any bill, for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may, at its option, cancel and terminate this contract, provided that, such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

6. Seller agrees that the gas delivered hereunder shall be merchantable, and that the average total heating value of the gas, delivered in any one day, shall not be less than nine hundred fifty (950) nor more than one thousand fifty (1,050) British thermal units per cubic foot.

7. The unit of the gas delivered hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

8. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified, and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

9. The measurement of volume and the determination of total heating value of gas delivered hereunder shall be made in the following manner:

(a) The unit of volume, for the purpose of measurement and for the determination of the total heating value, shall be one (1) cubic foot of gas, saturated with water vapor, at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

[fol. 692] (b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit. Provided, however, Seller may, at its option, install a recording thermometer to record the temperature of the gas flowing through the meters, and where such installation is provided, the arithmetic average of the temperature recorded shall be used in computing measurements.

(d) The specific gravity and relative humidity of the gas delivered hereunder shall be determined by approved methods at the beginning of the delivery of gas and thereafter monthly or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's Law, at the pressures under which said natural gas is delivered hereunder, shall be determined at intervals of three (3) months or at such other intervals as is found expedient in practice.

(f) The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's Glenarm Compressor Station or at such other place as may be agreed upon.

10. The point of delivery of gas delivered hereunder shall be on the outlet side of Seller's measuring station at the point of connection between the facilities of Seller with those of Buyer.

[fol. 63] 11. Seller agrees to install, maintain and operate at its own expense, at or near the point of delivery, a meter or meters and other necessary measuring equipment to measure the gas delivered hereunder.

12. Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon the request of Buyer, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

13. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever



requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

14. If, upon test, any measuring equipment (including recording calorimeter) is found to be not more than two (2) per cent fast or slow, previous recordings of such equipment shall be considered correct in computing the gas delivered hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) per cent, at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed [fol. 694] since the date of last test, not exceeding a correction period of thirty (30) days.

15. Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby, until the same shall have been delivered to Buyer at the point of delivery, after which, Buyer shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

16. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the point of delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

17. The natural gas to be sold hereunder, will be delivered by Seller to Buyer at main or lateral line pressures, without any reduction except such as Seller deems necessary to facilitate measurement and delivery.

18. The title to all meters, appliances, equipment, etc., placed on Buyer's premises and not sold to Buyer shall remain in Seller, with the right of removal at any time, and no charge shall be made by Buyer for use of premises occupied by same.

19. The obligation of Seller to sell and deliver gas hereunder shall be subject to Seller's right to curtail or inter-

rupt deliveries of gas to Buyer, when, in Seller's judgment, such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly, from the pipe line system of Seller, under classifications contemplating an uninterruptible supply of gas.

[fol. 695] 20. Neither party shall be liable to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

21. All gas sold and delivered hereunder is intended solely for use as industrial fuel in Buyer's plant and shall not be diverted or sold by Buyer.

22. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

23. This contract supersedes and cancels all previous contracts and agreements, between the parties hereto, with respect to the subject matter hereof.

24. This contract shall not be considered as renewed or extended beyond the term hereof, except by express agreement of the parties hereto in writing.

25. Any notice, statement or bill provided for in this contract, or any notice which either party may desire to give to the other, shall be in writing and shall be duly delivered [fol. 696] when mailed, by either registered or ordinary mail to the post office address of either of the parties hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company, 1221  
Baltimore Ave., Kansas City, Missouri.

Buyer: Albion Malleable Iron Company, Albion, Michigan.

26. Meter of Seller, provided for in Paragraph 11, hereof, will be located north of the Michigan Central Railroad tracks in the N. E. Quarter of the S. E. Quarter of Section thirty-three (33), Township two (2) S., Range four (4) W., Calhoun County, Michigan.

27. Seller agrees to construct, at its sole expense, the necessary three (3) inch lateral line from the inlet of Seller's aforesaid meter to Seller's twelve (12) inch West line in the N. W. Quarter of Section sixteen (16), Township three (3) South, Range four (4) W., Calhoun County, Michigan.

28. Buyer agrees to construct at its sole expense, the necessary three (3) inch line, from the outlet of Seller's aforesaid meter to Buyer's plant at Albion, Michigan.

In Witness Whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties.)

[fol. 697]

Exhibit 31

Application of Panhandle Eastern Pipe Line Company to Federal Power Commission dated January 28, 1944, re service to Albion Malleable Iron Company.

Comes now Panhandle Eastern Pipe Line Company, hereinafter referred to as "Applicant," and, pursuant to the provisions of Section 7 of the Natural Gas Act, as amended, applies for a certificate of public convenience and necessity to construct and operate the facilities hereinafter particularly described and in support of such application shows:

Applicant is a corporation organized and existing under the laws of the State of Delaware, with principal offices at 135 South La Salle Street, Chicago, Illinois, and at 1221



Baltimore Avenue, Kansas City, Missouri, and owns and operates an integrated natural gas pipe line system situated in the States of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio, and Michigan. Applicant is engaged in the transportation and sale of natural gas in interstate commerce for direct industrial use and also for resale for ultimate public consumption for domestic, commercial and industrial uses, and is a natural gas company as defined by the Natural Gas Act. As authorized by Section 57.5 of the Provisional Rules of Practice and Regulations under the Natural Gas Act, as amended, Applicant respectfully refers the Commission to the applications, as supplemented and amended, heretofore filed by Applicant and its former subsidiaries, Illinois Natural Gas Company and Michigan Gas Transmission Corporation, under Section 7 of the Natural Gas Act, as amended, under Docket Nos. G-254, G-452, and G-459 for [fol. 698] a concise and comprehensive description of its corporate organization and structure, of its gas reserves and of the gas companies and other customers served by it and of the areas served by such customers. Said applications, as supplemented and amended, with all exhibits filed therewith, are herein incorporated by reference.

All correspondence or communications in respect to the within application are to be addressed to Glenn W. Clark, Counsel of Applicant, at 1221 Baltimore Avenue, Kansas City, Missouri.

As of December 30, 1943, Applicant entered into a contract with Albion Malleable Iron Company, an industrial customer, hereinafter called "Customer," operating a plant in Albion, Michigan, to supply Customer with its fuel requirements (on an interruptible basis) for the operation of its continuous Malleable Iron Annealing Furnaces, its Batch Type Malleable Iron Annealing Furnaces, its large Core Ovens and Ladle Heaters, and for its other miscellaneous uses incidental to the production of Malleable Castings. A copy of said contract is attached hereto, marked Exhibit "A," and made a part hereof.

In order to comply with the aforesaid contract, it will be necessary to construct approximately 14,300 feet of three and one-half (3½) inch O. D. gas pipe line in a north-

easterly direction from a point on Applicant's twelve (12) inch Michigan West Line in Section 16, Township 3 South, Range 4 West, to a point in Section 33, Township 2 South, Range 4 West, near the city limits of Albion, Calhoun County, Michigan, and at the terminus of said line to construct a meter and regulator station and install therein a suitable meter and regulator. A map showing the general location of the proposed facilities with respect to Applicant's general system is attached hereto, marked Exhibit "B" and made a part hereof. A map showing the more specific location of the proposed facilities is attached hereto, marked Exhibit "C" and made a part hereof.

The necessary pipe fittings, valves, meter, regulator and the materials necessary to construct the meter and regulator station either are on hand in Applicant's warehouses or will be ordered under preference ratings applied for, which in Applicant's opinion will be sufficiently high to secure prompt delivery.

The Albion Malleable Iron Company has made application to the War Production Board on form W.P.B. 3314 for delivery of gas under Utilities Order U-7 and Applicant has added its recommendation under such application and requested approval thereof by the War Production Board. Upon receipt from the War Production Board of such preference rating order and other required approvals, copies thereof will be sent to the Commission in a supplement to this application.

Applicant further represents that if the certificate herein applied for is granted by this Commission and the requisite authority is obtained from the Michigan Public Service Commission, it immediately will commence the construction of said facilities and should be able to complete the same and commence deliveries of natural gas within a period of thirty days thereafter.

Applicant estimates that its deliveries to said customer through said facilities during the first year of service under said contract will be approximately 240,000 MCF at standard conditions and that it will receive revenues therefrom in the approximate amount of \$85,000.00.

Applicant estimates the cost of the proposed pipe line and appurtenances to be as follows:

**Material**

Pipe Lines, etc. ....	4,400.00
Meter and Regulator Station .....	2,100.00

**Labor**

Pipe Lines .....	13,800.00
Meter and Regulator Station .....	1,050.00
Right of Way and Damages .....	2,000.00
Engineering, Supervision, Miscellaneous Expenses and Contingencies .....	4,250.00

<b>Total</b> .....	<b>27,600.00</b>
--------------------	------------------

The facilities covered by this Application will constitute an integral part of Applicant's general pipe line system and will be supervised and operated with said system; therefore, it is impracticable to attempt to allocate operating expenses and fixed charges.

Applicant is advised that the Customer sought to be served by the facilities for which a certificate is requested is engaged in defense and war work in the manufacture of Malleable Iron Castings, the major portion of which is used in trucks, tank parts and gun mounts. Further, Applicant is advised that the furnaces, ovens and miscellaneous gas burning equipment in Customer's plant are designed for gaseous fuel and at present are operated on propane gas; that Customer desires to change to natural gas for the reasons that (a) Customer desires to increase output in order to fill its orders for castings and finds [fol. 701] that this can most readily and economically be done by using natural gas; (b) all propane is shipped to it in tank cars and if natural gas is used, it will relieve from fifteen to twenty railroad cars per month from this use to other service; (c) it now is difficult to obtain the adequate supply of propane to at all times maintain sufficient reserve fuel; (d) the use of natural gas will result in a more consistent and mechanically perfect product because of uniform heat control; and (e) the use of natural gas will be less expensive than the fuel now in use.



Because of the foregoing circumstances, Applicant and said Customer are desirous of making natural gas available to Customer at the earliest possible date.

The proposed facilities will be financed through the use of funds on hand.

Applicant is able and willing properly to do the acts and perform the service proposed and to conform to the provisions of the Natural Gas Act, as amended, and the requirements, rules and regulations of the Commission thereunder.

Wherefore, Applicant prays that Federal Power Commission issue a certificate of public convenience and necessity under Section 7 of the Natural Gas Act, as amended, for the construction, operation and maintenance of the facilities hereinabove described, and further prays that pending the determination of this application this Commission issue to it without a hearing, as provided in Section 7 of the Natural Gas Act, as amended, and in Sec. 57.9 of Order No. 99 under the Provisional Rules of Practice and Regulations under said Act, a temporary certificate of convenience and necessity authorizing the aforesaid construction, operation and sale in order that service to said [fol. 702] Customer may be commenced at the earliest possible date.

(Duly signed and verified under oath.)

(Exhibit A attached to the above application is set forth herein as Exhibit 30, page 689.)

Exhibits B and C attached to above application

(Here follow Exhibits B and C, folios 702a, 702b)

See Card 9 for Exhibits  
B and C (pp. 530A, 530B)





[fol. 703]

## Exhibit 32

Petition of Panhandle Eastern Pipe Line Company to Michigan Public Service Commission, filed January 27, 1944, for authority to construct and operate line to serve Albion Malleable Iron Company.

Your petitioner, Panhandle Eastern Pipe Line Company, respectfully represents:

1. That petitioner is a Delaware corporation, whose principal office is located at 1221 Baltimore Avenue, Kansas City, Missouri.

2. Under the authority heretofore granted by the Michigan Public Service Commission, the petitioner has constructed a transmission main in Michigan for the transportation or conveying of natural gas from gas reserves in and about the States of Texas and Kansas, beginning at a point near the Michigan and Ohio State line on the existing line of the Michigan Gas Transmission Corporation's line running in a Northerly direction to a point eight miles West of the Village of Zilwaukee, and also a line connecting therewith at a point about twenty miles East of Jackson and running in a Westerly direction to Jackson, Albion, Marshall, Battle Creek and Kalamazoo, and also a branch line connecting with the North and South line East into the Consumers Power Generating Station at Royal Oak. All of the aforesaid transmission lines and connections thereto are shown on maps on file with the Commission.

3. That it is the purpose of said corporation to install in a northeasterly direction from a point on Panhandle Eastern Pipe Line Company's 12 inch West line, Section [fol. 704] 16, in Township 3 South, Range 4 West, approximately 14,300 feet of 31½" O. D. gas pipe line to a point in Section 33, Township 2 South, Range 4 West, near the City limits of Albion, Calhoun County, Michigan, and there at the terminus of this line construct a meter station.

4. That attached hereto, and made a part hereof, are the specifications for the construction of the natural gas pipe line described in the preceding paragraph.

5. That attached hereto and made a part hereof are maps or plans of said proposed pipe line showing the ap-

proximate route of said pipe line to the City limits of Albion, Michigan.

6. That the construction of said proposed pipe line will at least equal, if not exceed, the tentative code for pressure piping prepared by the American Standard Association, sponsored by the American Society of Mechanical Engineers.

7. That petitioner does not propose to act as a common carrier for hire.

8. That petitioner has been licensed to do business in the State of Michigan; that insofar as possible a private right of way will be obtained, this right of way to permit proper construction, operation and maintenance of the pipe line.

9. That said proposed pipe line is in compliance with a contract entered into December 30, 1943 between the petitioner and Albion Malleable Iron Company, a corporation of the State of Michigan, whereby petitioner agreed to sell certain quantities of natural gas to said Albion Malleable Iron Company for use for industrial purposes by said company in Albion, Calhoun County, Michigan; that said [fol. 705] company agreed to buy from petitioner natural gas for the entire fuel requirements of two continuous malleable iron annealing furnaces, four Batch type malleable iron annealing furnaces, two large core ovens, ladle heaters and other miscellaneous uses incidental to the production of malleable castings, for a term of three years, beginning with the date of first delivery of natural gas to said Albion Malleable Iron Company; that it is agreed that the price of said natural gas shall be 3.55c per therm; that the petitioner further agreed to construct or cause to be constructed and maintained at its sole cost and expense the pipe line described above, and to install or cause to be installed and maintained and operated at its sole cost and expense such measuring equipment as may be reasonably necessary to effect delivery of and measure the gas agreed to be sold to said company; that said company agreed to construct at its sole expense the necessary three inch line from the outlet of petitioner's aforesaid meter to its plant at Albion, Michigan, said last described pipe line upon completion thereof to become and be the sole and separate property of said Albion Malleable Iron Company.

Therefore, petitioner prays that this Commission approve the attached map or plans and grant to the petitioner the right to construct and operate the above described line, and grant such other relief as it may be entitled to under this petition.

(Duly signed and verified under oath.)

[fol. 706]

### Exhibit 33

Petition of Albion Malleable Iron Company to Michigan Public Service Commission, filed February 21, 1944, for right to construct and operate pipe line described therein. Your petitioner, Albion Malleable Iron Company, a Michigan corporation, respectfully represents:

1. That petitioner is a Michigan corporation, whose principal office is located at Albion, Michigan.

2. That the Albion Malleable Iron Company is engaged in the business of manufacturing malleable iron castings, and for that purpose requires natural gas for fuel in its manufacturing processes; that it is engaged 100% in the manufacture of material for the armed services, and in that respect in many particulars is agent of the Defense Plant Corporation.

3. That it is the purpose of said corporation to install in a southeasterly direction from the proposed meter station of Panhandle Eastern Pipe Line Company located in Section 33, T. 2 S., R. 4 W., near the City Limits of Albion, Calhoun County, Michigan, a 3" O. D. gas pipe line approximately 1695 feet in length, which would run across Section 34 of said township, with a terminus at the property of the petitioner, where it will be connected with pipes running into the plant of the petitioner; that in obtaining the right of way and installing said pipe line petitioner will be acting as agent of the Defense Plant Corporation.

4. That attached hereto and made a part hereof are the specifications for the construction of the natural gas pipe line described in the preceding paragraph.

[fol. 707] 5. Attached hereto and made a part hereof are maps or plans of said proposed pipe line showing the approximate route of said pipe line from the meter station of



Panhandle Eastern Pipe Line Company to the property of petitioner.

6. That the construction of said proposed pipe line will be at least equal, if not in excess, of the tentative code for pressure piping prepared by the American Standard Association, sponsored by the American Society of Mechanical Engineers.

7. That the petitioner will not act as a common carrier for hire.

8. That insofar as possible, a private right of way will be obtained, this right of way to permit proper construction, operation and maintenance of the pipe line.

9. That said proposed pipe line is in compliance with a contract entered into December 30, 1943 between the petitioner and Panhandle Eastern Pipe Line Company, whereby petitioner agreed to buy certain quantities of natural gas for use in industrial purposes of said Panhandle Eastern Pipe Line Company, and it agreed to sell to your petitioner natural gas for the entire fuel requirements of two continuous malleable iron annealing furnaces, four Batch type malleable iron annealing furnaces, two large core ovens, ladle heaters and other miscellaneous uses incidental to the production of malleable castings, for a term of three years, beginning with the date of first delivery of natural gas to petitioner; that it is agreed that the price of said natural gas shall be 3.55¢ per therm; that the Panhandle Eastern Pipe Line Company has agreed to construct or cause to be constructed and maintained at its sole cost and expense a pipe line from its main 12" line to a point [fol. 708] near the City Limits of Albion in Section 33, T. 2 S., R. 4 W., and such measuring equipment as may be reasonably necessary to effect delivery of natural gas to the pipe line proposed to be constructed by petitioner. Petitioner is to construct the pipe line herein described at the sole cost and expense of Defense Plant Corporation, and said pipe line is to be the sole and separate property of the Defense Plant Corporation but constructed for the use of your petitioner.

Therefore, petitioner prays that this Commission approve the attached map or plans, and the specifications, and grant to petitioner as agent for the Defense Plant Corporation the right to construct and operate the above de-

scribed line, and grant such other relief as it may be entitled to under this petition.

(Duly signed and verified under oath.)

#### Exhibit 34

Letter of Panhandle Eastern Pipe Line Company to Michigan Public Service Commission withdrawing application, filed January 27, 1944.

Now comes the petitioner, Panhandle Eastern Pipe Line Company, and withdraws its petition for authority to install in a northeasterly direction from a point on Panhandle Eastern Pipe Line Company's 12 inch West line, Section 16, in Township 3 South, Range 4 West, approximately 14,300 feet of 3½" O. D. gas pipe line to a point in Section 33, Township 2 South, Range 4 West, near the City limits of Albion, Calhoun County, Michigan, and there at the terminus of this line to construct a meter station.

Panhandle Eastern Pipe Line Company, By Clayton F. Jennings, One of Its Attorneys.

Dated: March 10, 1944.

[fol. 709]

#### Exhibit 35

Letter of Albion Malleable Iron Company to Michigan Public Service Commission withdrawing application, filed February 21, 1944.

Now comes the petitioner, Albion Malleable Iron Company, a Michigan corporation, and withdraws its petition for authority to install in a southeasterly direction from a proposed meter station of Panhandle Eastern Pipe Line Company located in Section 33, T. 2 S., R. 4 W., near the City Limits of Albion, Calhoun County, Michigan, a 3" O. D. gas pipe line approximately 1695 feet in length, which would run across Section 34 of said township, with a terminus at the property of the petitioner.

Albion Malleable Iron Company, By Clayton F. Jennings, One of Its Attorneys.

Dated: March 15, 1944.

Letter of Panhandle Eastern Pipe Line Company to Federal Power Commission withdrawing its application dated January 28, 1944, re Albion Malleable Iron Company.

### Withdrawal of Application

Comes now Panhandle Eastern Pipe Line Company, Applicant in the above entitled proceeding, and withdraws its Application for a Certificate of Public Convenience and Necessity for the construction, operation and maintenance of approximately fourteen thousand three hundred (14,300) feet of three and one-half ( $3\frac{1}{2}$ ) inch O. D. gas pipe line from its Michigan West line to a point near the city limits of Albion, Michigan.

Respectfully submitted, Panhandle Eastern Pipe Line Company, By C. H. M. Burnham, Vice-President.

(Stamped received by Federal Power Commission, March 10, 1944.)

Supplement to Withdrawal of Application filed with Federal Power Commission by Panhandle Eastern Pipe Line Company.

Comes now Panhandle Eastern Pipe Line Company, formerly the "Applicant" in the above entitled proceeding, the application in which has been withdrawn; and files this Supplement to its Withdrawal of Application for the purpose of informing the Commission as to the bases for said withdrawal.

Although Panhandle Eastern had entered into a contract with Albion Malleable Iron Company, hereinafter called "Malleable," to supply its requirements for industrial gas through a separate pipe line and had applied for a certificate of public convenience and necessity from this Commission and for preference ratings and allocations of steel from the War Production Board, the Albion Gas Light Company, hereinafter called "Utility," filed its application with the War Production Board for priority ratings and



allocation of steel in the hope that it would render the gas service for which Panhandle Eastern had contracted with Malleable.

Because of the applications for intervention in Docket No. G-521, which followed Panhandle Eastern's application for a certificate, it became apparent that the Commission could not grant a temporary certificate and that a hearing and decision in the matter could not be had until after it became absolutely necessary for Malleable to receive gas from some source in order to operate its new equipment and meet its production schedules.

[fol. 712] Malleable, as an agent of Defense Plant Corporation, has under construction additional production facilities which are designed for the use of natural gas as fuel, and U. S. Ordnance has been insisting that that company have natural gas available without further delay in order that its manufacture of malleable iron castings for use in amphibious landing craft, Army trucks, tanks and other war equipment could go forward without delay. Therefore, upon the urgent request of Malleable, Utility officials and Panhandle Eastern officials conferred in an attempt to formulate a plan and method by which gas could be made available to Malleable as soon as required.

This conference developed the facts (a) that Panhandle Eastern's two-inch lateral line serving the Utility in Albion has sufficient capacity to carry the requirements of Malleable, as well as the requirements of the Utility (b) that through the use of distribution facilities now owned and operated by the Utility within the City of Albion, and through the addition thereto of approximately nineteen hundred (1900) feet of six-inch gas pipe line (about one-third of the steel required by Panhandle Eastern under the plan set forth in its application for a certificate in Docket No. G-521), the Utility could receive, at Panhandle Eastern's Albion Town Border Station, the quantities of natural gas required by Malleable under its contract with Panhandle Eastern and could transport those quantities at suitable pressures and deliver the same to Malleable without commingling the same with mixed gas being used in the Utility's distribution system, and (c) that upon receipt of the necessary pipe and materials, the Utility could complete promptly the necessary facilities to transport and deliver Malleable's requirements, and that safe

and adequate service to Malleable could be accomplished in that manner.

[fol. 713] Both Panhandle Eastern and the Utility were of the opinion that in the circumstances the service should be rendered by the use of existing facilities and by the construction by the Utility of the additional nineteen hundred (1900) feet of pipe. Therefore, it was agreed that the Utility would receive the requirements of Malleable at the outlet side of Panhandle Eastern's Albion Town Border Measuring Station, transport the same as an independent contractor and deliver the gas to Malleable for the account of Panhandle Eastern for the consideration of .45¢ per therm. It was agreed that the quantities of gas transported and delivered for the account of Panhandle Eastern would be deemed to be those quantities recorded by measuring equipment to be installed by the Utility upon the premises of Malleable. It was further agreed that the basis of measurement would be the same as contained in Panhandle Eastern's standard industrial contract; that title to the gas would remain in Panhandle Eastern but that the Utility would indemnify Panhandle Eastern against damages caused thereby to third parties while the gas was in the possession of the Utility. The foregoing terms were agreed upon by Panhandle Eastern and by the Utility as a result of said conference, but because of other pressing matters requiring the immediate attention of the officials of both companies, the terms of agreement have not yet been reduced to a formal written instrument.

Furthermore, Panhandle Eastern and Malleable have agreed to amend the contract between them, dated December 30, 1943, to eliminate their respective obligations to construct the facilities described therein and to make such other minor modifications of that contract as might be necessary in view of the changed plan of [fol. 714] transportation and delivery. Such amendment has not been incorporated into a formal written instrument but when this is accomplished, in the near future, the contract as so amended will be filed with this Commission.

Upon reaching the understandings above set forth, Panhandle Eastern immediately withdrew its application for a certificate in Docket No. G-521 and also its application to the War Production Board for priority rating and an allocation of the necessary materials to construct the line

described in the application for a certificate in Docket No. G-521. Following this action the War Production Board granted priority assistance to the Utility and made an allocation of the necessary pipe and materials for the above described additions to the Utility's distribution system. The pipe has been received by the Utility and the additional pipe line is being constructed for Utility by a contractor to the end that gas service to Malleable will be available when first needed for additional core ovens, on or about March 25, 1944, and for additional heat treating furnaces, during the early part of April, 1944..

(Duly signed and verified under oath.)

[fol. 715]

### Exhibit 38

Industrial Gas Contract between Panhandle Eastern Pipe Line Company and Michigan Seamless Tube Company, dated January 4, 1943.

This agreement, made and entered into as of the 4th day of January, 1943, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware, hereinafter referred to as "Seller," and Michigan Seamless Tube Company, a corporation of the State of Michigan, hereinafter referred to as "Buyer":

Seller owns and operates a natural gas transmission system, used in the transmission and sale of natural gas, and has available certain quantities of natural gas which Seller desires to transport, sell and deliver to Buyer.

Buyer desires to purchase from Seller certain quantities of such natural gas for use in its plant in South Lyon, Oakland County, Michigan.

Now, therefore, in consideration of the mutual covenants and agreements of the parties hereto, as herein set forth, the parties hereto covenant and agree as follows:

1. Seller agrees to transport, sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas for the entire fuel requirements of two (2) Roller Type Controlled Atmosphere Annealing Furnaces and one (1) Pointing Furnace at its plant in the City of South Lyon, Michigan, subject to the terms and conditions hereof, for the term of two (2) years commencing with the



date on which Seller advises Buyer in writing that Seller [fol. 716] is prepared to commence delivery hereunder of natural gas to Buyer, and at the price of:

For the first 100,000 therms of natural gas delivered in any one month, five (5) cents per therm, For all natural gas in excess of 100,000 therms delivered in any one month, four (4) cents per therm.

2. Seller shall render bills on or before the 10th day of each calendar month for all gas delivered hereunder during the preceding month.

3. Buyer agrees to pay Seller on or before the 15th day of each calendar month for all gas delivered hereunder during the preceding month.

4. Seller will add to and include in bills rendered to Buyer hereunder the amount of any tax, with respect to the sale or delivery of gas hereunder, which Seller is now or hereafter required by law to collect from Buyer and pay to any governmental agency.

If, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, sales or excise tax, with respect to the natural gas sold and delivered hereunder, in excess of such tax as is now levied and imposed and which Seller is not required by law to collect from Buyer, the amount of such increased tax shall be added to the price to be paid by Buyer to Seller hereunder; provided, however, that in the event the amount of such additional tax, in the judgment of Buyer, shall operate to make the price of gas prohibitive to Buyer, then Buyer shall have the right and privilege of cancelling and terminating this contract, and thereupon all obligations and liabilities of the parties hereunder shall cease, unless [fol. 717] Seller shall notify Buyer in writing of its election to assume and pay such additional tax; provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

5. In the event Buyer shall fail to pay any bill, for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may, at its option, cancel and terminate this contract, provided that, such cancellation and termination shall not affect Buyer's

obligation to pay for all gas theretofore delivered by Seller.

6. Seller agrees that the gas delivered hereunder shall be merchantable, and that the average total heating value of the gas, delivered in any one day, shall not be less than nine hundred fifty (950) nor more than one thousand fifty (1,050) British thermal units per cubic foot.

7. The unit of the gas delivered hereunder shall be the therm, consisting of one hundred thousand (100,000) British thermal units.

8. The number of therms delivered shall be determined by multiplying the number of cubic feet of gas delivered, measured on the measurement basis hereinafter specified and corrected to saturated conditions, by the total heating value of such gas in British thermal units per cubic foot and by dividing the product by one hundred thousand (100,000).

9. The measurement of volume and the determination of total heating value of gas delivered hereunder shall be made in the following manner:

(a) The unit of volume, for the purpose of measurement and for the determination of total heating value, [fol. 718] shall be one (1) cubic foot of gas, saturated with water vapor, at a temperature of sixty (60) degrees Fahrenheit and an absolute pressure equivalent to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit. Provided, however, Seller may, at its option, install a recording thermometer to record the temperature of the gas flowing through the meters, and where such installation is provided, the arithmetic average of the temperature recorded shall be used in computing measurements.

(d) The specific gravity and relative humidity of

the gas delivered hereunder shall be determined by approved methods at the beginning of the delivery of gas and thereafter monthly or at such other times as is found expedient in practice.

(e) The deviation of the natural gas from Boyle's Law, at the pressures under which said natural gas is delivered hereunder, shall be determined at intervals of three (3) months or at such other intervals as is found expedient in practice.

(f) The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's Glenarm Compressor Station or at such other place as may be agreed upon.

[fol. 719] 10. The point of delivery of gas delivered hereunder shall be on the outlet side of Seller's measuring station at the point of connection between the facilities of Seller with those of Buyer.

11. Seller agrees to install, maintain and operate at its own expense, at or near the point of delivery, a meter or meters and other necessary measuring equipment to measure the gas delivered hereunder.

12. Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon the request of Buyer, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

13. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

14. If, upon test, any measuring equipment (including recording calorimeter) is found to be not more than two (2) per cent fast or slow, previous recordings of such equipment shall be considered correct in computing the gas delivered hereunder; but such equipment shall be adjusted properly at once to record accurately. If, upon



test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) per cent, at a recording [fol. 720] corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last test, not exceeding a correction period of thirty (30) days.

15. Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby, until the same shall have been delivered to Buyer at the point of delivery, after which, Buyer shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

16. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property or equipment of the indemnifying party, the point of delivery of the gas, as hereinbefore specified, to be the point of division of responsibility between the parties.

17. The natural gas to be sold hereunder, will be delivered by Seller to Buyer at main or lateral line pressures, without any reduction except such as Seller deems necessary to facilitate measurement and delivery.

18. The title to all meters, appliances, equipment, etc., placed on Buyer's premises and not sold to Buyer shall remain in Seller, with the right of removal at any time, and no charge shall be made by Buyer for use of premises occupied by same.

[fol. 721] 19. The obligation of Seller to sell and deliver gas hereunder shall be subject to Seller's right to curtail or interrupt deliveries of gas to Buyer, when, in Seller's judgment, such gas is needed to meet the requirements of other customers receiving service, either directly or indirectly, from the pipe line system of Seller, under classifications contemplating an uninterruptible supply of gas.

20. Neither party shall be liable to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public

enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, storms, floods, wash-outs, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension, and which by the exercise of due diligence such party is unable to prevent or overcome.

21. All gas sold and delivered hereunder is intended solely for use as industrial fuel in Buyer's plant and shall not be diverted or sold by Buyer.

22. This contract is subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto, and shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns.

23. This contract supersedes and cancels all previous contracts and agreements, between the parties hereto, with respect to the subject matter hereof.

[fol. 722] 24. This contract shall not be considered as renewed or extended beyond the term hereof, except by express agreement of the parties hereto in writing.

25. Any notice, statement or bill provided for in this contract, or any notice which either party may desire to give to the other, shall be in writing and shall be duly delivered when mailed, by either registered or ordinary mail, to the post office address of either of the parties hereto, as the case may be, as follows:

Seller: Panhandle Eastern Pipe Line Company, 1221  
Baltimore Ave., Kansas City, Missouri

Buyer: Michigan Seamless Tube Company, South  
Lyon, Michigan.

Buyer agrees that its purchase of gas hereunder during each of the two years of this agreement will aggregate at least Ten Thousand (\$10,000) Dollars, and to the extent that the purchase of gas hereunder, during either of said years, may fall below the minimum of Ten Thousand (\$10,000) Dollars, herein specified for each of said years,

Buyer agrees to pay Seller, within fifteen (15) days after the expiration of the year for which the minimum is not met, the difference between the amount of money paid Seller for all gas purchased hereunder during said year and said minimum amount of money which Buyer hereby obligates itself to pay Seller during each of said years.

In consideration of Buyer's undertaking hereunder, Seller agrees to construct or cause to be constructed, and maintain and operate, at Seller's sole cost and expense, a suitable pipe line extending from a point on Seller's eighteen inch so-called North Line, now under construction, lying south of the town of South Lyon, Michigan, to a point [fol. 723] at or near the corporate limits of said town of South Lyon, at which said point Seller will install, or cause to be installed, and maintain and operate, at its sole cost and expense, such measuring equipment as may reasonably be necessary to effect delivery of and measure the gas agreed to be sold hereunder; Seller also agrees to cause to be constructed, for and on behalf of Buyer but at Seller's sole cost and expense, a suitable pipe line extending from the outlet side of the aforementioned measuring equipment, to be installed as aforesaid by Seller, to Buyer's premises, and said last described pipe line shall, upon the completion thereof, be and become the sole and separate property of Buyer. Buyer agrees to secure, in its own name, such franchises, permits, licenses and easements in the city of South Lyon, Michigan as may be necessary to enable Seller to cause the construction, for and on behalf of Buyer, of the pipe line extending from the measuring station to Buyer's premises, as aforesaid.

In the event Seller's facilities for the delivery of gas hereunder are not completed prior to June 1, 1943, then this agreement shall become null and void and all rights and liabilities of the parties hereunder shall cease and ~~determine and this agreement shall thereafter be of no~~ force or effect.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective Presidents or Vice Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested



by their respective Secretaries or Assistant Secretaries, the day and year first above written.

(Duly executed by respective parties.)

[fol. 724]

### Exhibit 39

Application of Panhandle Eastern Pipe Line Company, Filed March 18, 1943, with the Federal Power Commission re Michigan Seamless Tube Company extension.

Comes now Panhandle Eastern Pipe Line Company, hereinafter referred to as "Applicant," and pursuant to the requirements of Section 7(e) of the Natural Gas Act, as amended, applies for a certificate of public convenience and necessity to construct and operate the hereinafter particularly described facilities, and in that behalf shows:

Applicant is a corporation organized and existing under the laws of the State of Delaware, with its principal office located at 1221 Baltimore Avenue, Kansas City, Missouri, and owns and operates, directly and through its wholly owned subsidiaries, Michigan Gas Transmission Corporation and Illinois Natural Gas Company, which in effect are operating arms or departments of Applicant, an integrated natural gas pipe line system situated in the States of Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Ohio and Michigan. Said companies are engaged in the transportation and sale of natural gas in interstate commerce for direct use and for resale for ultimate public consumption for domestic, commercial and industrial uses. For a more concise and comprehensive description of its existing business operations and properties, Applicant respectfully refers the Commission to the Application under Section 7(c) of the Natural Gas Act, as amended, now on file with the Commission under Docket No. G-254, which Application with its exhibits, is herein incorporated by reference. [fol. 725] All correspondence or communications in regard to the within application are to be addressed to G. J. Neuner, Vice President of Applicant, at 1221 Baltimore Avenue, Kansas City, Missouri.

As of January 4, 1943 Applicant entered into a contract with Michigan Seamless Tube Company, an industrial customer, hereinafter called "Customer," operating a plant in South Lyon, Oakland County, Michigan, manufac-

turing cold drawn seamless steel tubing to supply Customer with its fuel requirements (on an interruptible basis) for the operation of two roller type controlled atmosphere annealing furnaces and one pointing furnace. In order to comply with the aforesaid contract, it will be necessary to lay a two-inch pipe line from Applicant's "Michigan North" eighteen inch high pressure line to the plant site of customer, a distance of approximately 4,600 feet, in Sections 29 and 30, Township 1 North, Range 7 East, Oakland County, Michigan, and construct a metering and regulator station and install therein a suitable meter and regulator.

The only materials to be used in the construction of this line will be the necessary two inch pipe, fittings, valves, meters, regulators and metering and regulator station, all of which materials and supplies are either now in the warehouses of Applicant or have been ordered under preference ratings sufficiently high, in Applicant's opinion, to secure prompt delivery.

Applicant further represents that upon the granting of a certificate by this Commission, it will immediately commence the construction of said line and should be able to complete it and be in a position to commence deliveries of natural gas within fifteen days.

[fol. 726] Applicant would reasonably expect to supply, through the facilities for which construction is requested, a maximum of 75,000 MCF for the first year with an estimated revenue therefrom of \$37,500.00.

Applicant estimates the cost of the proposed pipe line and appurtenances to be as follows:

Materials .....	\$ 830.00
Labor .....	1,410.00
Right of way .....	350.00
Measuring Station Site .....	75.00
Measuring and Regulator Station .....	5,260.00
Contingencies .....	1,185.00
<b>Total .....</b>	<b>\$9,110.00</b>

The facilities covered by this Application constitute a part of Applicant's general pipe line system and if constructed they will be supervised and operated with the

general system; therefore, it is impracticable to attempt to allocate operating expenses and fixed charges.

Applicant has been advised that the Customer sought to be served by the facilities for which a certificate is requested is engaged in the manufacture of cold drawn seamless steel tubing and the major portion of its output is used in the production of airplanes in connection with the war effort.

Applicant is further advised that the portion of the equipment of Customer sought to be served is designed for the use of gas, but butane is now being used as fuel, and that Customer desires to change to natural gas for the reasons that (a) all butane is shipped to it in tank cars and if natural gas is used, it will relieve six to eight railroad tank cars per month from this use to other service, [fol. 727] (b) it is now difficult to maintain adequate supplies of butane to maintain sufficient reserve fuel, (c) the use of natural gas will result in a more consistent and mechanically perfect product because of uniform heat control and (d) the use of natural gas will be less expensive than the fuel now in use.

Upon formal application the War Production Board, on February 4, 1943, granted Customer permission to receive deliveries of natural gas not in excess of 205,000 cubic feet in any one day. A copy of a letter from the War Production Board granting such permission is attached hereto, marked Exhibit "A", and made a part hereof. The present facilities of Customer for the use of butane can be used for standby purposes.

Because of the foregoing circumstances, Applicant and said Customer are desirous that natural gas be made available to Customer at the earliest possible date.

Wherefore, Applicant prays that Federal Power Commission issue a certificate of public convenience and necessity under Section 7(e) of the Natural Gas Act, as amended, for the construction of a two inch pipe line and necessary appurtenances, as aforesaid, from its eighteen inch high pressure "Michigan North" line at a point in Section 29, Township 1 North, Range 7 East, to the plant of Michigan Seamless Tube Company in Section 30, Township 1 North, Range 7 East, Oakland County, Michigan, a distance of



approximately 4600 feet and for the transportation of natural gas therethrough, as aforesaid.

Applicant further prays that if the Commission deems a hearing to be necessary before the issuance of a permanent certificate, that the Commission issue to it, without [fol. 728] notice or hearing, a temporary certificate of convenience and necessity authorizing the aforesaid construction and transportation in order that Applicant may commence the construction of the aforesaid facilities promptly and make natural gas available to Customer at the earliest practicable date.

(Duly signed and verified under oath.)

Exhibit "A"

Attached to Application—Exhibit 39, February 4, 1943

CEC L-31 Tempo R Room-2629

Michigan Seamless Tube Company, South Lyon, Michigan  
Gentlemen:

The review of your application of recent date for relief from the restrictions of paragraph (e) (1) of Limitation Order L-31, as amended, upon new or increased deliveries of gas to non-residential consumers, has been completed.

We wish to advise that on the basis of the facts obtained, you are permitted to receive deliveries of gas not to exceed 205,000 cubic feet in any one day for the uses described in said Application, provided that standby fuel storage, handling, and burning facilities are maintained to replace [fol. 729] 205,000 cubic feet of natural gas per day during periods of curtailment.

Very truly yours, Ernest Kanzler, Director General for Operations.

CEC:ca

cc: Panhandle Eastern Pipe Line Co.

(Also attached to Application Exhibit 39 is a copy of War Production Board Preference Rating Order No. P-19-h, dated April 17, 1943, covering materials necessary for the construction of the proposed line to Michigan Seamless Tube Company.)

## Exhibit 40

Order of Federal Power Commission, dated May 27, 1943, issuing Temporary Certificate of Public Convenience and Necessity re line to Michigan Seamless Tube Company.

Upon consideration of the application for a temporary certificate of public convenience and necessity filed by the Panhandle Eastern Pipe Line Company on March 18, 1943, to authorize the construction, installation and operation of the facilities hereinafter described, and other material in the Commission's records and files pertaining to the applicant; and

• It appearing to the Commission that:

(a) Applicant operates an integrated natural gas pipeline system and is engaged in the transportation and sale [fol. 730] of natural gas in interstate commerce for direct use and for resale for ultimate public consumption for domestic, commercial, and industrial uses;

(b) Applicant seeks a temporary certificate of public convenience and necessity pursuant to Section 7 (c) of the Natural Gas Act, as amended, authorizing the applicant to construct and operate the following facilities for the transportation and sale of natural gas to the Michigan Seamless Tube Company:

A 2-inch pipeline approximately 4,600 feet in length extending from a point on the applicant's "Michigan North" line to the plant of the Michigan Seamless Tube Company situated in Sections 29 and 30, T. 1 N., R. 7 E., Oakland County, Michigan, together with valves, fittings, regulators, meters, and other equipment and appurtenances necessary for the operation of the line:

(c) On April 17, 1943, the War Production Board issued a project preference rating order permitting the use of materials on hand and available to the applicant and the purchase of such additional critical material necessary to construct the proposed line, described in paragraph (b) above;

(d) Michigan Seamless Tube Company has been granted, as of February 4, 1943, permission by the War Production

Board to receive deliveries of natural gas not in excess of 205,000 cubic feet in any one day;

The Commission finds that:

(1) Applicant is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, or other use and is a natural-gas company within the meaning of the Natural Gas Act;

[fel. 731] (2) By reason of the present national emergency, the public interest requires the issuance of a temporary certificate of public convenience and necessity authorizing the applicant to construct, install, and operate the facilities described in paragraph (b) above;

The Commission orders that:

A temporary certificate of public convenience and necessity be and it hereby is issued for a period of five years, or for the duration of the national emergency, whichever is longer, authorizing the applicant to construct, install, and operate facilities described in paragraph (b) above, and as shown in the application and for the transportation and sale of natural gas to the Michigan Seamless Tube Company, upon the following express terms and conditions:

(i) The construction and installation of facilities hereby authorized shall be commenced on or before June 15, 1943, and completed on or before July 15, 1943;

(ii) Applicant shall report to the Commission, under oath, the completion date of the facilities above described, together with the date that the same is put in service;

(iii) Nothing herein is to be construed as indicating that the Commission has authorized or that it will authorize the construction and operation of the facilities described in its application filed February 25, 1943, by Panhandle Eastern Pipe Line Company, Docket No. G-452;

(iv) The issuance of this temporary certificate is without prejudice to the authority of the Commission



with respect to rates, valuation, costs, services, accounts or any other matters whatsoever in any proceeding now pending before the Commission or that may come [fol. 732] before the Commission with respect to said applicant, or the facilities herein authorized to be constructed, installed and operated, and nothing herein shall be construed as an acquiescence by the Commission in any estimate or determination of cost or any valuation of property claimed or asserted by the applicant, nor shall it be considered as a determination of service area under Section 7(f) of the Natural Gas Act as amended;

(v) Upon the failure of the applicant to comply with any of the terms and conditions herein, this temporary certificate shall cease to have any force or effect.

#### Exhibit 41

Application of Panhandle Eastern Pipe Line Company to Michigan Public Service Commission for authority to construct a gathering line to Continental Oil Company well, dated January 18, 1943.

To the Michigan Public Service Commission:

1. Your petitioner, Panhandle Eastern Pipe Line Company, is a Delaware corporation, duly authorized to do business in the State of Michigan, whose residence is at Kansas City, Missouri, and whose principal place of business in the State of Michigan, is at 1400 Olds Tower, Lansing, Michigan.

2. That it has entered into a contract with Continental Oil Company which would expire on June 1, 1943 for the purchase of 200,000,000 cubic feet of gas from its well known as J. C. Turner Well No. 1, Section 15, Township 3 South, Range 4 West, Calhoun County, Michigan.

[fol. 733] 3. That the pertinent portion of said contract reads as follows:

"Buyer agrees to take such quantities of gas each day as Seller's well will deliver against the varying pressures from time to time existing in Buyer's pipe line and to take a minimum of two hundred million cubic feet of gas during the term hereof; provided, however, should Buyer be un-

able to receive such minimum quantity of gas prior to June 1, 1943, and Seller is ready, willing and able to deliver such minimum quantity, then Buyer agrees to pay Seller at the rates herein provided for the difference between the volume taken by buyer and the above stated minimum quantity. However, if at any time Seller's well shall not be in condition to produce gas for a period exceeding twenty-four hours, Buyer's obligation hereunder to take two hundred million cubic feet of gas shall be reduced in the proportion that the period the well is not in such condition bears to the period between the date of connection of said well and June 1, 1943."

4. That it is the purpose of the applicant to construct a field gathering line for the transportation or conveying of the natural gas from the well head of the aforesaid well to its main transmission line, a distance of 365 feet.

5. That there is an urgent necessity for the granting of authority to the petitioner to gather from the source of the aforesaid well the natural gas contracted for to meet the demand of war industries at Albion and Battle Creek, Michigan, for natural gas.

Said petitioner, therefore, prays that the Michigan Public Service Commission under the authority of Act No. 9, Public Acts of Michigan of 1929, may grant to said petitioner immediate authority to construct a field gathering line for the transportation or conveying of the natural gas [fol. 734] from the well head of the aforesaid J. C. Turner Well No. 1 to its main transmission line, and to transport said gas from said source to the locality or localities described above.

(Duly signed and verified under oath.)

#### Exhibit 42

Order of Michigan Public Service Commission, dated January 18, 1943, authorizing Panhandle Eastern Pipe Line Company to construct gathering line to Continental Oil Company well.

On January 18, 1943 Panhandle Eastern Pipeline Company filed with this Commission a petition requesting authority to construct and operate a three inch O. D. steel pipe line for a distance of approximately 365 feet for the

purpose of conveying natural gas from the Continental Oil Company well known as J. C. Turner No. 1, located in the NE $\frac{1}{4}$  of SE $\frac{1}{4}$  of NE $\frac{1}{4}$  Section 15, T3S, R4W, Albion Township, Calhoun County, to its previously constructed pipe line lying approximately 365 feet to the north of the above well.

The petitioner showed that it had a contract with the Continental Oil Company for the purchase of a minimum of 200 million cubic feet of gas from the above described well during the term of the contract which expires June 1, 1943. It is further represented that there is an urgent necessity for this gas in order to meet contract requirements for the demands of war industries at Albion and Battle Creek, Michigan.

A map was also filed with the Commission showing the approximate route of the proposed pipe line.

In considering this matter the Commission takes official notice of the facts that:

[fol. 735] 1. It has previously authorized the Pan-handle Eastern Pipeline Company to extend its transmission lines to the city gates of Battle Creek and Albion.

2. That on at least one recent occasion the public press has reported a shortage of manufactured gas in the City of Battle Creek.

3. That the sworn testimony before this Commission in another case emphasized the poor condition of the coal gas manufacturing equipment in the City of Albion and the necessity of relief in the form of a limited supply of natural gas.

4. That War Production Board orders coming to the attention of the staff of the Commission provide for the temporary cutting off of its Michigan system from the Texas supply of gas so that its entire Kalamazoo line would have to be served with Michigan gas.

After careful consideration of these matters the Commission is of the opinion that the construction and operation of a temporary emergency line will serve the convenience and necessities of the general public and should be approved.



Now, therefore, it is hereby ordered by the Michigan Public Service Commission:

1. That the Panhandle Eastern Pipeline Company is hereby authorized to construct and operate a temporary three inch pipe line for the transportation of natural gas from the Continental Oil Company J. C. Turner No. 1 well, located in the NE $\frac{1}{4}$  of the SE $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 15, T3S, R4W, Albion Township, Calhoun County, Michigan, to the twelve inch pipeline of the said Panhandle Eastern Pipeline Company, a distance of approximately 365 feet north of the well.

2. That in view of the fact that the line does not cross any public highway it may be laid on top of the ground or in such other manner as the petitioner finds proper in accordance with the usual gas field practice.

3. That this authority for the construction and operation of the temporary pipeline, having been granted without a public hearing, shall not serve to prejudice these matters for future full consideration in any way in connection with any application that may be made for authority to construct a pipeline to this prospective new gas area nor shall it confer any gathering or common purchaser rights either now or in the future on the Panhandle Eastern Pipeline Company. This permit shall further be revokable at the will of the Commission and shall automatically expire June 1, 1943, unless the petitioner shall on or prior to that date make proper representation to this Commission showing its need for a longer use of this temporary line and the Commission shall have granted such an extension.

Jurisdiction is expressly reserved in this matter by the Commission for the purpose of making such other and further orders in the premises as may in the future be necessary and proper.

Exhibit 43

Map of distribution system of Michigan Consolidated Gas Company in the Detroit District.

(Here follows Exhibit 43, folio 737)

See Card 9 for Exhibit 43,  
(Page 556A)

[fol. 738] IN SUPREME COURT OF MICHIGAN

43716

PANHANDLE EASTERN PIPE LINE COMPANY,

vs.

MICHIGAN PUBLIC SERVICE COMMISSION, ET AL.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—April 14,  
1950

This cause coming on to be heard is argued by Mr. Patterson for the plaintiff and by Mr. Fraser for the defendants and is duly submitted.

[fol. 739] IN SUPREME COURT OF MICHIGAN

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff and  
Appellee,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, Defendant and  
Appellant,

MICHIGAN CONSOLIDATED GAS COMPANY, Intervenor and  
Appellant.

OPINION—Filed October 10, 1950

Before the Entire Bench, BOYLES, C. J.

The issue in this case is whether the direct sale of natural gas to local consumers in Michigan by the plaintiff, an interstate pipe-line company, is within the jurisdiction of the Michigan public service commission.

The Panhandle Eastern Pipe Line Company (hereinafter called Panhandle), a Delaware corporation, is engaged in the interstate transportation of natural gas by pipe line from Texas and other States into Michigan. It is an interstate natural gas pipe-line company, subject to regulation by the Federal Power Commission under the Federal natural gas act (15 USC § 717 *et seq.*). It sells



the greater part of its natural gas to local public utilities for resale for ultimate consumption. A part of its natural gas is sold by it direct to local industrial consumers, known as "direct industrial sales". In 1945 it entered into a contract with the Ford Motor Company to sell natural gas direct to said company at its Dearborn plant for its own consumption. The plant of said company is within a municipality already served by the Michigan Consolidated Gas Company, a public utility engaged in selling natural gas to consumers in said municipality after having been granted a certificate of public convenience and necessity to do so. Panhandle also sought other local customers, and publicly announced an intention to sell directly to other industrial consumers when possible.

[fol. 740] The said Michigan Consolidated Gas Company filed a complaint with the Michigan public service commission and, after notice and a hearing, the commission ordered that Panhandle

"cease and desist from making direct sales and deliveries of natural gas to industries within the State of Michigan, located within municipalities already being served by a public utility, until such time as it shall have first obtained a certificate of public convenience and necessity from this commission to perform such services."

Section 2 of PA 1929, No. 69 (CL 1948, § 460,532 (Stat. Ann. § 22.142)), under which the Michigan public service commission assumed jurisdiction to make said order, provides:

"No public utility shall hereafter \* \* \* render any service for the purpose of transacting or carrying on a local business \* \* \* in any municipality in this State where any other utility or agency is then engaged in such local business and rendering the same sort of service, \* \* \* until such public utility shall first obtain from the commission a certificate that public convenience and necessity requires or will require such \* \* \* operation, \* \* \*"

Panhandle, claiming that said order of the Michigan public service commission prohibited it from selling natural gas in this State direct to a local consumer for its own use, filed in the circuit court of Ingham county the bill of complaint in the instant case to set aside and enjoin enforce-

ment of the commission's order. It added to its bill of complaint the motion made by it before the Michigan public service commission, in which it sought the dismissal of the petition filed there by the Michigan Consolidated Gas Company, and making the claim:

"That the Michigan public service commission has no jurisdiction over the subject matter of the sale of natural gas, a commodity in interstate commerce, by Panhandle Eastern Pipe Line Company to Ford Motor Company," and that:

"Panhandle Eastern Pipe Line Company has the right to sell and deliver gas to industrial consumers without regulation by the Michigan public service commission of such interstate commerce."

In the circuit court the Michigan Consolidated Gas Company intervened in the case and, after an extended hearing, the circuit judge entered a decree permanently restraining the Michigan public service commission from interfering in the direct sale of natural gas by Panhandle to the said Ford Motor Company or other industrial users in the State of Michigan. From said decree, the Michigan public service commission and the intervenor Michigan Consolidated Gas Company appeal.

[fol. 741] Panhandle construes the order of the Michigan public service commission as an absolute denial of the right of Panhandle to sell natural gas in this State direct to local consumers for their own consumption and use; in other words, that said order denies Panhandle a certificate of public convenience and necessity to sell natural gas direct to local consumers. We do not so construe the order. It is, however, a direct order by the Michigan public service commission, finding that it does have jurisdiction to determine whether a certificate of public convenience and necessity shall be granted to Panhandle to carry on said operation. It denies the right of Panhandle to sell natural gas to the Ford Motor Company or other local consumers for their own consumption, without first obtaining a certificate of public convenience and necessity from the commission. It leaves the door open for a hearing before the Michigan public service commission as to whether or not public convenience and necessity requires the granting of such a

certificate to Panhandle, after a proper hearing on that question. The statute states what the commission shall take into consideration in determining the question of public convenience and necessity, and what the certificate shall provide. CL 1948, § 460.505 (Stat. Ann. § 22.145). If the commission, after such a hearing, should deny such a certificate to Panhandle, the statute affords it a remedy for review in the courts; and, on the contrary, if at such hearing the commission should grant such a certificate to Panhandle, the intervenor herein or any other interested party would likewise have the same right of review. The statute so provides. CL 1948, § 460.506 (Stat. Ann. § 22.146).

In the instant case the bill of complaint was filed and the decree entered in the circuit court, and also the appeal therefrom taken to this Court, prior to the decision of the United States supreme court in *Panhandle Eastern Pipe Line Company v. Public Service Commission of Indiana* (December 1947), 332 U. S. 507. The statute law of the State of Indiana requires that a certificate of public convenience and necessity be obtained from the Indiana public service commission as a prerequisite to engaging in the operation of a public utility. Burns Ind. Stat. Ann. § 54.602. In that respect the Indiana law is substantially the same as the statute law of this State (CL 1948, § 460.502 (Stat. [fol. 742] Ann. § 22.142), *supra*). The decision of the United States supreme court in the *Panhandle-Indiana Case*, *supra*, is so conclusive of the issue now before us that we quote from and adopt it at length, as follows:

"Broadly the question is whether Indiana has power to regulate sales of natural gas made by an interstate pipe-line carrier direct to industrial consumers in Indiana. More narrowly we are asked to decide whether the commerce clause, Const., art. 1, § 8, by its own force forbids the appellee, public service commission, to require appellant to file tariffs, rules and regulations, annual reports, etc., as steps in a comprehensive plan of regulation preliminary to possible exercise of jurisdiction over rates and service in such sales.<sup>1</sup>

<sup>1</sup> The commission is authorized to take these steps by Indiana statutes creating the State's regulatory scheme for public utilities. Burns Ind. Stat. Ann. §§ 54-101 *et seq.*



"Panhandle Eastern transports natural gas from Texas and Kansas fields into and across intervening States, including Indiana, to Ohio and Michigan. In Indiana it furnishes gas to local public utility distributing companies and municipalities. These in turn supply the needs of over 112,000 residential, commercial and industrial consumers.

"Since 1942 appellant also has sold gas in large amounts direct to Anchor-Hocking Glass Corporation for industrial consumption.<sup>2</sup> Shortly before beginning this service appellant had informed a number of its customers, local distributing companies in Indiana, that it intended to render service directly to large industrial consumers wherever possible.<sup>3</sup> Pursuant to that policy, since these proceedings began direct service has been extended to another big industrial user.<sup>4</sup>

"In 1944 the commission initiated hearings relative to direct service by Panhandle Eastern to Indiana consumers. It concluded that 'the distribution in Indiana by Panhandle of natural gas direct to consumers is subject to regulation by this commission under the laws of this state,' notwithstanding any alleged contrary effect of the commerce clause upon appellant's direct sales to industrial users. Accordingly it issued its order of November 21, 1945, for the filing of tariffs, etc., as has been stated.

<sup>2</sup> Appellant's sales to Anchor-Hocking are far larger than sales made to several of the local distributing companies. Thus, in 1943 appellant sold 1,150,279 cubic feet to Anchor-Hocking and only 151,065 cubic feet to the local utility served from the same branch line. \* \* \*

<sup>3</sup> This was in 1941. In 1943 the chairman of appellant's board stated that "Panhandle was anxious to take over such business because it was unregulated transaction both as to the Federal power commission and the public service commission of Indiana and that he intended to establish higher industrial rates based on a competitive fuel basis."

<sup>4</sup> Prior to the hearings before the commission appellant had entered into arrangements to provide direct industrial service to an E. I. Dupont de Nemours & Company plant near Fortville, Indiana. That service was commenced subsequent to the hearings.

"Early in 1946 Panhandle Eastern brought this suit in a State Court to set aside and enjoin enforcement of the order.

"The trial court vacated the orders and enjoined the commission from enforcing them. It accepted appellant's view of the effect of the commerce clause on its operations. The Supreme court of Indiana reversed that judgment and denied the relief appellant sought. 224 Ind. 662. It held first that the commission's orders amounted to an unequivocal assertion of power to regulate rates and service on appellant's direct industrial sales and thus presented squarely the question of the commission's jurisdiction over such sales as affected by the commerce clause. The court did not flatly hold that the sales are in interstate rather than intrastate commerce. But, taking them to be of the former kind, it held them nevertheless subject to the State's power of regulation under the doctrine of *Cooley v. Board of Wardens*, 12 How. 299. The court further held that appellant, in making these sales, is a public utility within the meaning and application of the State's regulatory statutes. Burns Ind. Stat. Ann. §§ 54-105 and Ind. Acts 1945, c. 53, p. 110. It is this decision we have to review pursuant to § 237 of the judicial code, 28 U. S. C. 344 (a).<sup>6</sup>

"The effect of the State statutes, whether permitting the filing of the tariffs, etc., as information unrelated to further regulation or requiring the filing as initial and integral steps in the regulatory scheme, and thus as presenting at the threshold of the scheme's application the question of the State's power to go further with it, is primarily a question of construction for the State courts to determine. In view of the commission's position, as construed by the State Supreme Court, we cannot say that the only thing presently involved is the State's power to require the filing

<sup>6</sup> Several of the local utility companies, which had been intervenors in the proceedings before the commission, were permitted to intervene in the court test of the orders and are appellees here. The National Association of Railroad and Utilities Commissioners has filed a brief *amicus curiae* in support of the commission's positions.

of information without reference to its further use for controlling these sales. Cf. *Arkansas Louisiana Gas Co. v. Department of Public Utilities*, 304 US 61. Here the orders constituted 'an unequivocal assertion of power' to regulate rates and service. Indeed they involve something more than a mere threat to apply the regulatory plan in its later phases. They represent the actual application of that plan in its initial stage. In such a situation appellant was not required to await a further regulatory order before contesting the commission's jurisdiction. Cf. *Public Utilities Comm'n v. Gas Co.*, 317 US 456. \* \* \*

"The controlling issues therefore are two: (1) Has Congress, by enacting the natural gas act, 52 Stat. 821, 15 USC § 717, in effect forbidden the States to regulate such sales as those appellant makes directly to industrial consumers; (2) if not, are those sales of such a nature, as related to the *Cooley* formula, that the commerce clause of its own force forbids the States to act.

"We think there can be no doubt of the answer to be given to each of these questions, namely, that the States are competent to regulate the sales. \* \* \*

"Three things and three only Congress drew within its own regulatory power, delegated by the act to its agent, the Federal power commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale.

"The omission of any reference to other sales, that is, to direct sales for consumptive use, in the affirmative declaration of coverage was not inadvertent. It was deliberate. For Congress made sure its intent could not be mistaken by adding the explicit prohibition that the act 'shall not apply to any other \* \* \* sale \* \* \*,' (Emphasis added.) Those words plainly mean that the act shall not apply to any sales other than sales 'for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.' Direct sales for consumptive use of whatever sort were excluded.

"The line of the statute was thus clear and complete. It cut sharply and cleanly between sales for resale and direct sales for consumptive uses. No exceptions were [fol. 744] made in either category for particular uses,



quantities or otherwise. And the line drawn was that one at which the decisions had arrived in distributing regulatory power before the act was passed.<sup>12</sup>

"Moreover, this unusual legislative precision was not employed with any view to relieving or exempting any segment of the industry from regulation. The act, though extending Federal regulation, had no purpose or effect to cut down State power. On the contrary, perhaps its primary purpose was to aid in making State regulation effective, by adding the weight of Federal regulation to supplement and reinforce it in the gap created by the prior decisions.<sup>13</sup>

12 \* \* \* (T)he Supreme Court has from the beginning allowed the State both to tax and to fix the price on the first sale or delivery of gas or electricity brought in from a sister State when and if this first sale is also necessarily the last sale because consummated by consumption.' Powell, Note, 58 Harv. L. Rev. 1072, 1082.

<sup>13</sup> In H. R. Rep. No. 709, 75th Cong., 1st Sess., the committee on interstate and foreign commerce said of the proposed bill which became the natural gas act: 'It confers jurisdiction upon the Federal power commission over the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See *Pennsylvania Gas Co. v. Public Service Commission* (1920), 252 US 23.) There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of congres-

"Congress, it is true, occupied a field. But it was meticulous to take in only territory which this court had held the States could not reach.<sup>15</sup> That area did not include direct consumer sales, whether for industrial or other uses."

The Federal natural gas act, which the court in the Panhandle-Indiana Case thus construed as permitting State regulation of the sale of natural gas by Panhandle direct to industrial users for their own consumption, reads<sup>20</sup> as follows:

"The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas, (June 21, 1938, ch. 556, § 1, 52 Stat. 821.)" USC (1946 ed.), title 15, ch. 15B, § 717 (b).

Since this case was argued and submitted, we have requested counsel to file further briefs limited to the question now before us, and such briefs have been filed. The questions asked of counsel were:

"1. If plaintiff now concedes that the rates may be regulated, how can this be done except through the Michigan public service commission? How can the latter legally regulate without Panhandle submitting itself to its jurisdiction by securing a certificate?

"2. Has Panhandle the right to sell natural gas direct to consumers for their own use and not for resale without

signal action, not subject to State regulation. (See *Missouri v. Kansas Gas Co.* (1924), 265 US 298, and *Public Utilities Commission v. Attleboro Steam & Electric Co.* (1927), 273 US 83.) The basic purpose of the present legislation is to occupy this field in which the supreme court has held that the States may not act.

See also HR Rep. No. 2651, 74th Cong., 2d Sess. 1-3; Sen. Rep. No. 1162, 75th Cong., 1st Sess.

<sup>15</sup> "See notes 12 and 13, *supra*."

a certificate of public convenience and necessity from the Michigan public service commission—in other words, is the authority of Michigan public service commission over such sales limited to regulation of rates and services?"

The issue in this Court has been narrowed down since the decree was entered from which the defendant and the intervening defendant have appealed. The bill of complaint filed in the circuit court by Panhandle, likewise the decree entered there by that court, and the appeal to this court, in 1946, preceded the decision of the United States supreme court in the Panhandle-Indiana Case, *supra* (December, 1947). Originally, the bill of complaint filed by Panhandle asked that the Michigan public service commission be permanently restrained from interfering with the sale of natural gas by Panhandle to the Ford Motor Company or any other industrial consumers in this State. The decree as entered permanently restrains the Michigan public service commission

"from interfering in the sale of natural gas by the Panhandle Eastern Pipe Line Company, its successors or assigns, to the Ford Motor Company or any other industrial consumers in the State of Michigan."

In this Court, since the decision of the United States supreme court in Panhandle-Indiana, *supra*, Panhandle concedes that

"sales of natural gas transported in interstate commerce, when made directly to consumers, are subject to State regulation as to rates."

Therefore, Panhandle now limits the issue, in this court, to the claim that it has the absolute right in this State to sell natural gas direct to consumers for their own consumption and not for resale, subject only to the State's "regulation" of rates and services. To further delimit the precise issue now before us, Panhandle now specifically [fol. 746] claims the right to sell natural gas to the Ford Motor Company and other industrial consumers for their own use, not for resale, in a municipality where the defendant Michigan Consolidated Gas Company is engaged in such local business, and rendering the same sort of service; and claims the right to do so without any express authority, certificate, or approval from the Michigan public service commission except as to rates.



Since the Panhandle-Indiana decision, Panhandle now necessarily concedes that the Federal natural gas act has not occupied the field of sales of natural gas direct to consumers for their own consumption, not for resale (for example, the proposed sale to Ford Motor Company). In construing the Federal natural gas act, the United States supreme court in that case said:

"The omission of any reference to other sales, that is, to direct sales for consumptive use, in the affirmative declaration of coverage was not inadvertent. It was deliberate. For Congress made sure its intent could not be mistaken by adding the explicit prohibition that the act 'shall not apply to any other \* \* \* sale \* \* \*.' (Emphasis added.) Those words plainly mean that the act shall not apply to any sales other than sales 'for resale for ultimate public consumption for domestic, commercial, industrial, or any other use.' Direct sales for consumptive use of whatever sort were excluded.

"The line of the statute was thus clear and complete. It cut sharply and cleanly between sales for resale and direct sales for consumptive uses."

Panhandle also concedes that the defendant Michigan public service commission is the only State agency with power to exercise regulatory authority over the sales of natural gas in this State by a public utility. It now claims, however, the right to make sales of natural gas under the circumstances here involved, without the approval of the Michigan public service commission by the issuing to Panhandle of a certificate of public convenience and necessity from that State agency. As we have pointed out, such sales, without such a certificate, would be in direct violation of PA 1929, No. 69, § 2 (CL 1948, § 460.502 (Stat. Ann. § 22.142)), which expressly declares that no public utility shall render any service in any municipality in this State where any other utility is rendering the same sort of service, until such public utility shall first obtain from the Michigan public service commission a certificate of public convenience and necessity. Furthermore, the defendant commission, were it to enter an order approving rates and services of Panhandle in the absence of such certificate, would also be acting in contravention of the express inhibitions contained in said statute.

Obviously, Panhandle seeks to skim the cream off the local market for natural gas in the municipality where the intervening defendant now provides such services, by selling gas to Ford Motor Company and other industrial users, without regard to the public convenience and necessity for natural gas by other users in the Detroit area, particularly for domestic use. If Panhandle is free to compete at will for such local markets, and take the cream of the business, any other utility providing the same service in the same area might be forced to obtain higher rates for its services when it must obtain its natural gas from Panhandle, and thus would face a distinct disadvantage. The right to exclude such competition, where the general public convenience and necessity so require, has been delegated by the legislature to the Michigan public service commission. It is within the power of that commission, after a proper hearing and upon a proper showing of the facts and the necessities, to determine whether Panhandle, by selling natural gas direct to industrial users in Detroit, would thus serve the public convenience and the necessities of users of natural gas in that area where Panhandle now claims the absolute right to engage in such service.

The Panhandle-Indiana Case controls decision here. The right to sell natural gas in this State by Panhandle direct to consumers for their own use and not for resale, in a municipality where another public utility is rendering the same sort of service, is within the jurisdiction of the Michigan public service commission. Any other conclusion would allow Panhandle to engage in such business without either Federal or State control over the right to engage in such services. As a prerequisite to engaging in the business over which the Federal power commission has authority to control, Panhandle must obtain a certificate from that commission. As a prerequisite to engaging in that part of such business in this State over which the Congress has expressly relinquished control, the State regulatory commission has a like power. It has long been the general policy of the law that a public utility should be subjected to governmental control.

The decree enjoining the Michigan public service commission from interfering in the sale of natural gas by Panhandle to industrial consumers is vacated and a decree

[fol. 748] may be entered in this Court affirming the order of the Michigan public service commission, with costs to appellants.

Walter H. North, Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Concurred with Boyles,  
C. J.

(File endorsement omitted.)

[fol. 749] \ IN SUPREME COURT OF MICHIGAN

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff and  
Appellee,

v.

MICHIGAN PUBLIC SERVICE COMMISSION, Defendant and  
Appellant,

MICHIGAN CONSOLIDATED GAS COMPANY, Intervenor and  
Appellant

OPINION—Filed October 10, 1950

Before the Entire Bench; DETHMERS, J.

I do not concur with Mr. Chief Justice Boyles in reversal. I do agree that Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana, 332 US 507, is conclusive of at least one of the issues before us, viz., that the sales of natural gas here involved are in interstate commerce. Although reasoning in Federal Power Commission v. East Ohio Gas Co., 338 US 464, may give rise to some uncertainty as to the court's continued adherence to that view, nevertheless the court did not therein expressly overrule, despite its specific mention, the Panhandle-Indiana Case. Does the holding in Panhandle-Indiana, as indicated by Mr. Chief Justice Boyles, support defendant's contention that it may require plaintiff to obtain from it a certificate of public convenience and necessity as a prerequisite to making, within this state, the sales in interstate commerce here involved and, accordingly, order plaintiff to cease and desist from making those sales until such certificate has



been obtained? I think not. On the contrary, the opinion in that case, as quoted at length in Mr. Chief Justice Boyles' opinion in this case, makes it clear that decision therein is confined to the following: first, that the sales are in interstate commerce; second, that, as such, they are subject to state regulation as to *rates and service*, both under previous decisions of the court and by virtue of the provisions of the Federal natural gas act; third, that the orders of the Indiana commission requiring plaintiff to file tariffs, [fol. 750] rules and regulations, annual reports, etc., are valid and permissible initial steps in the state's application of its regulatory plan to plaintiff. Nowhere in the opinion is it suggested that the Indiana commission sought to require, or that the court was upholding the right of the commission to require, plaintiff to obtain a certificate of public convenience and necessity before making, in Indiana, the sales in interstate commerce there involved. Rather, in holding the State of Indiana clothed with regulatory power as to *rates and service*, the court, significantly, said:

"State power to regulate interstate commerce, wherever it exists, is not the power to destroy it, unless Congress has expressly so provided."

Defendant points to no such express congressional provision either in the Federal natural gas act or elsewhere.

Defendant cites *Clark v. Poor*, 274 US 554, in which the court held constitutional a state regulation providing that before operating over state highways a common carrier by motor shall apply for and obtain a certificate or permit therefor from a state commission and pay an extra tax for maintenance of highways and administration of laws governing their use even though applied to carriers engaged exclusively in interstate commerce. That it is not authority for defendant's position here clearly appears from the statement in the opinion therein that while the state act called the required certificate a certificate of public convenience and necessity, the state commission had recognized that under *Buck v. Kykendall*, 267 US 307, and *Bush & Sons v. Maloy*, 267 US 317, it had no discretionary power to grant or withhold a certificate on the grounds of public convenience and necessity or lack thereof as relates to carriers engaged exclusively in interstate commerce and

that the commission was, therefore, willing to grant the certificate upon application and compliance with, other provisions of the law. No such situation confronts us here. As stated in Mr. Chief Justice Boyles' opinion, the commission's order in the case at bar "is, however, a direct order by the Michigan public service commission, finding that it does have jurisdiction to determine whether a certificate of public convenience and necessity shall be granted to Panhandle \* \* \* It denies the right of Panhandle to sell natural gas to \* \* \* local consumers for their own consumption, without first obtaining a certificate of public convenience and necessity from the commission. It leaves [fol. 751] the door open for a hearing before the Michigan public service commission as to whether or not public convenience and necessity requires the granting of such a certificate to Panhandle \* \* \* The statute states what the commission shall take into consideration in determining the question of public convenience and necessity \* \* \* CL 1948, § 460.505 (Stat. Ann. § 22.145)." The cited statute requires the commission, in determining the question of public convenience and necessity to "take into consideration the service being rendered by the utility then serving such territory, the investment in such utility, the benefit, if any, to the public in the matter of rates and such other matters as shall be proper and equitable in determining whether or not public convenience and necessity requires the applying utility to serve the territory." It is the plain intent of the act, from which alone the commission derives its power to grant certificates of public convenience and necessity, that the commission shall not issue such certificate unless and until it shall have determined, upon the basis of the considerations mentioned in the statute, that public convenience and necessity requires the applying utility to serve the territory. It is, therefore, the clear legal import of the commission order here involved that plaintiff shall not make the sales in question unless and until the commission shall have determined that public convenience and necessity requires such sales and, axiomatically, that plaintiff shall never make such sales so long as the commission remains unpersuaded, in view of existing facilities, that public convenience and necessity do require such sales by plaintiff. So understood, this be-

comes, then, a plain case of the commission asserting the power to prohibit these sales in interstate commerce if they compete with the sales and business of local utilities. It is no mere coincidence that defendant's cease and desist order, by its own terms, expressly limits its restraint upon plaintiff to operations in municipalities already being served by some other public utility. The extent to which prevention of competition with a local utility was the motivating consideration may be gathered from the pleadings and from exhibits in the case, particularly telegrams from defendant and intervenor to the Federal power commission protesting plaintiff's invasion of intervenor's "distribution area". Prevention of competition with local commerce by interstate commerce is an objective, in and of itself, not permitted under the "commerce clause" to be accomplished by a state. *Hood & Sons v. DuMond*, 336 US 525; *Buck v. Kuykendall*, supra; *Bush & Sons v. Maloy*, supra; *Baldwin v. Seelig*, 294 US 511. While a state may regulate the transportation and sale of natural gas in interstate commerce within its boundaries, it may not prohibit it. *West v. Kansas Natural Gas Co.*, 221 US 229. A state cannot make the right to transport or sell, within its territorial limits, goods in interstate commerce dependent upon satisfying a state authority that public convenience and necessity requires such operation and upon thus securing a certificate of public convenience and necessity from the state. Statutes so providing are, in that respect, unconstitutional. Determination of the adequacy of existing facilities as affecting the right to sell in interstate commerce is distinctly a federal and not a state function. *Buck v. Kuykendall*, supra; *Bush & Sons v. Maloy*, supra. We are not impressed by the defendant's suggestion that the latter two cases are overruled by *Clark v. Poor*, supra, inasmuch as the court there upheld state regulatory action only as it was predicated upon state recognition of the force and applicability thereto of the *Buck* and *Bush* Cases.

Defendant stresses a difference between the case at bar and the *Buck* and *Bush* Cases in that in the latter cases a certificate had been applied for and refused, while here plaintiff has made no such application. The difference is of no legal significance in this connection. In testing



the validity of the commission order a consideration of what the commission might do with an application of plaintiff for a certificate is of no consequence. The question is not whether the commission would exercise its powers properly, but, rather, what are the commission's powers? Under the commission's order plaintiff is prohibited from selling natural gas in Michigan to local consumers in interstate commerce until plaintiff secures a certificate of public convenience and necessity from defendant. Under the applicable Michigan statute the power of defendant to issue such certificate is conditioned upon a determination that public convenience and necessity so require. Inherent in the claimed discretionary power to grant is the power to deny the certificate. *Sault Ste Marie v. International [fol. 753] Transit Co.*, 234 US 333. Do the provisions of the "commerce clause" permit the state commission to prohibit plaintiff from making sales in interstate commerce merely because the sales are not required by public convenience and necessity? The answer of the *Buck and Bush Cases* is, "no". The subsequently enacted Federal natural gas act has conferred no such powers upon the states. It is this lack of power in a state to condition the right to engage in interstate commerce therein upon its view of the requirements of public convenience and necessity which distinguishes this case from such cases as *Highland Farms Dairy v. Agnew*, 300 US 608, cited by defendant, in which the state undertook no more than to license and subject certain intrastate commerce to what the court had theretofore held to be permissible regulatory provisions, the court saying; appropriately enough, that one may not be heard to complain in advance of his application for a license that there is danger of refusal. The inapplicability of that language to a case such as this, in which the state seeks to assert a power which it does not possess, is obvious.

The decree of the trial court reversed the commission order and permanently restrained defendant from interfering with the sales in question. From its opinion it appears that the trial court did not thereby intend to prevent lawful regulation of such sales by defendant, but merely to prevent the interference implicit in the commission's order reversed by the court. So construed, the

decree should be affirmed, without costs, a public question being involved.

Neil E. Reid, Leland W. Carr, Concurred with  
Dethmers, J.

(File endorsement omitted.)

[fol. 754] IN SUPREME COURT OF MICHIGAN

[Title omitted]

ORDER FOR ENTRY OF DECREE—October 10, 1950

In this cause an opinion is filed, in accordance with which a decree will be entered hereafter.

[fol. 754-A] IN SUPREME COURT OF MICHIGAN

43716

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff and  
Appellee,

vs.

MICHIGAN PUBLIC SERVICE COMMISSION, Defendant and  
Appellant,

MICHIGAN CONSOLIDATED GAS COMPANY, Intervenor and  
Appellant.

DECREE—October 27, 1950

This cause having been brought to this Court by appeal from the Circuit Court for the County of Ingham, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Ingham, in Chancery, be and the same is hereby reversed, vacated and held for naught, that the injunction heretofore issued be dissolved, and that the order of the Michigan Public Service Commission be affirmed.

And it is further ordered, adjudged and decreed that the appellants do recover of and from the appellee their several costs to be taxed.

[fol. 755] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

**PRAECIPE**

To the Clerk of the Supreme Court of Michigan:

You will please prepare a transcript of the record in the above-entitled cause to be transmitted to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The entire record to date in this cause.
  2. Petition for appeal.
  3. Order allowing appeal.
  4. Citation on appeal.
  5. Assignment of errors.
  6. Statement of jurisdiction of the Supreme Court of the United States.
  7. Statement of appellant required by paragraph 2 of [fols. 756-757] Rule 12 of the Rules of the Supreme Court of the United States.
  8. Certificate of service of notice of appeal.
  9. This praecipe.
- Dated: Dec. 4, 1950.

Robert P. Patterson, Counsel for Appellant.

[fol. 758] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

**PETITION FOR APPEAL**

Considering itself aggrieved by the final decree and judgment of the Supreme Court of Michigan entered on October 27, 1950, Panhandle Eastern Pipe Line Company, plaintiff and appellant herein, does hereby pray that an



appeal be allowed to the Supreme Court of the United States from said final decree and judgment and from each and every part thereof; that citation be issued in accordance with law; that an order be made with respect to the appeal bond to be given by said defendant and appellant and that the amount of security be fixed by the order allowing the appeal; and that the material parts of the record, proceedings, and papers upon which said final judgment and decree was based duly authenticated be sent to the [fols. 759-760] Supreme Court of the United States in accordance with the rules in such case made and provided.

Respectfully submitted, Robert P. Patterson, Counsel for defendant-appellant.

Appeal allowed —, Emerson R. Boyles, Chief Justice, Michigan Supreme Court.

12/1/1950.

[fol. 761] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

#### ORDER ALLOWING APPEAL

Panhandle Eastern Pipe Line Company having made and filed its petition praying for an appeal to the Supreme Court of the United States from the final judgment and decree of the Supreme Court of Michigan in this cause entered on October 27, 1950, and from each and every part thereof, and having presented its assignment of errors and prayer for reversal and its statement as to the jurisdiction of the Supreme Court of the United States on appeal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

Now, therefore, it is hereby ordered that said appeal be and the same is hereby allowed as prayed for.

It is further ordered that the amount of the appeal bond be and the same is hereby fixed in the sum of \$250.00, with [fols. 762-763] good and sufficient surety, and shall be conditioned as may be required by law.

It is further ordered that citation shall issue in accordance with law.

Emerson R. Boyles, Chief Justice, Michigan Supreme Court.

Dated: December 1, 1950.

[fols. 764-765] Citation in usual form omitted in printing.

[fol. 766] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

#### ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL

Panhandle Eastern Pipe Line Company, plaintiff in the above-entitled cause, in connection with its appeal to the Supreme Court of the United States, hereby files the following assignment of errors upon which it will rely in its prosecution of said appeal from the final judgment of the Supreme Court of Michigan entered on October 27, 1950. The Michigan Supreme Court erred:

1. In upholding the validity of a Michigan statute (Act 69, Section 2 of the Public Acts of 1929) and an order of the Michigan Public Service Commission duly [fols. 767-768] entered thereunder on February 18, 1946, which, as construed by that court, prohibit the sale of natural gas in transit in interstate commerce by an interstate natural gas pipe line company directly to an industrial consumer in a municipality already served, without first obtaining a certificate of public convenience and necessity, against the claim of plaintiff-appellant that they contravene the commerce clause of the Constitution of the United States.

Wherefore, plaintiff, Panhandle Eastern Pipe Line Company, prays that the final decree of the Supreme Court of Michigan be reversed, and for such other relief as the Court may deem fit and proper.

Robert P. Patterson, Counsel for Plaintiff-Appellant.

Dated: November 28, 1950.

[fols. 769-784] Bond on appeal for \$500.00 approved December 6, 1950, omitted in printing.

[fol. 785] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 786] IN SUPREME COURT OF MICHIGAN

43716

PANHANDLE EASTERN PIPE LINE COMPANY, Plaintiff,

vs.

MICHIGAN PUBLIC SERVICE COMMISSION, Defendant and Appellant,

MICHIGAN CONSOLIDATED GAS COMPANY, Intervening Defendant and Appellant  
Parties

Plaintiff's Attorneys: Shields, Ballard, Jennings & Bishop, Samuel H. Riggs.

Defendants' Attorneys: Stephen J. Roth, Edmund E. Shepherd, James W. Williams, Angell, Turner, Dyer & Meek.

Appeal from Ingham, in Chancery

Date	Proceedings
1947	
Mar. 12.	Record on appeal filed.
Mar. 27.	Permission to file briefs amicus curiae granted.
1950	
Feb. 3.	Note of argument filed.
Apr. 14.	Argued and submitted.
Oct. 10.	Opinion filed.
Oct. 27.	Decree entered.
Oct. 27.	Record returned to Court below.
Dec. 1.	Petition, citation, statement of jurisdiction, assignments of error for appeal to Supreme Court of United States lodged.
Dec. 1.	Appeal allowed.



1951

- Jan. 2. Statement against jurisdiction filed.  
 Jan. 3. Record certified and transmitted.

[fol. 787] IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1950

No. 486

[Title omitted]

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION  
 OF PARTS OF RECORD TO BE PRINTED—Filed January 24,  
 1951.

1. Appellant adopts for its statement of points upon which it intends to rely in its appeal to this Court the point contained in its Assignment of Errors heretofore filed.

2. Appellant designates the entire record, as filed in the above-entitled case, for printing by the Clerk of this Court.

Robert P. Patterson, Counsel for Appellant, One  
 Wall Street, New York City.

[fols. 788-789]. [Affidavit of service by mail omitted.]

[fol. 790]. [File endorsement omitted.]

[fol. 791] SUPREME COURT OF THE UNITED STATES

October Term, 1950

No. 486

[Title omitted]

ORDER NOTING PROBABLE JURISDICTION—February 26, 1951

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdic

tion is noted and the case is transferred to the summary docket.

Endorsed on Cover: Enter Robert P. Patterson, File No. 54,992, Michigan, Supreme Court, Term No. 486, Panhandle Eastern Pipe Line Company, Appellant, vs. Michigan Public Service Commission and Michigan Consolidated Gas Company. Filed January 9, 1951. Term No. 486 O. T. 1950.

(3496)





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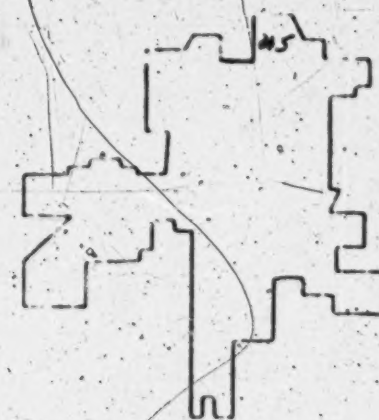
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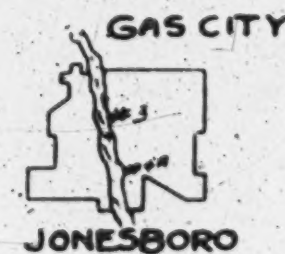
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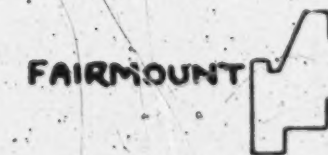


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JONESBORO



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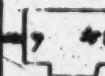


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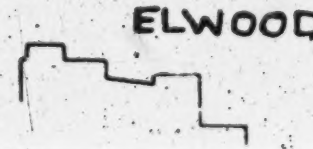
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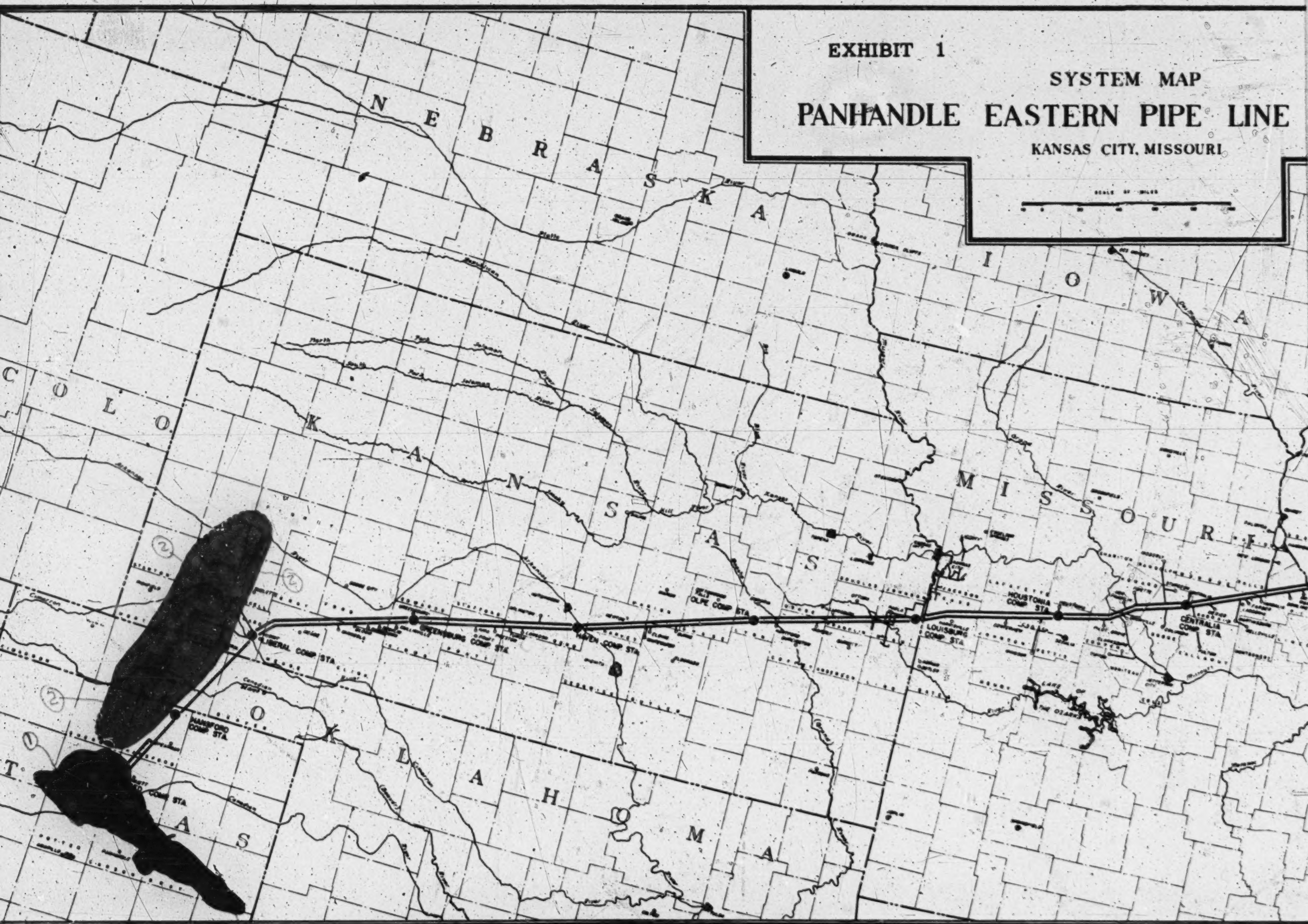
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PIPE LINE CORP.

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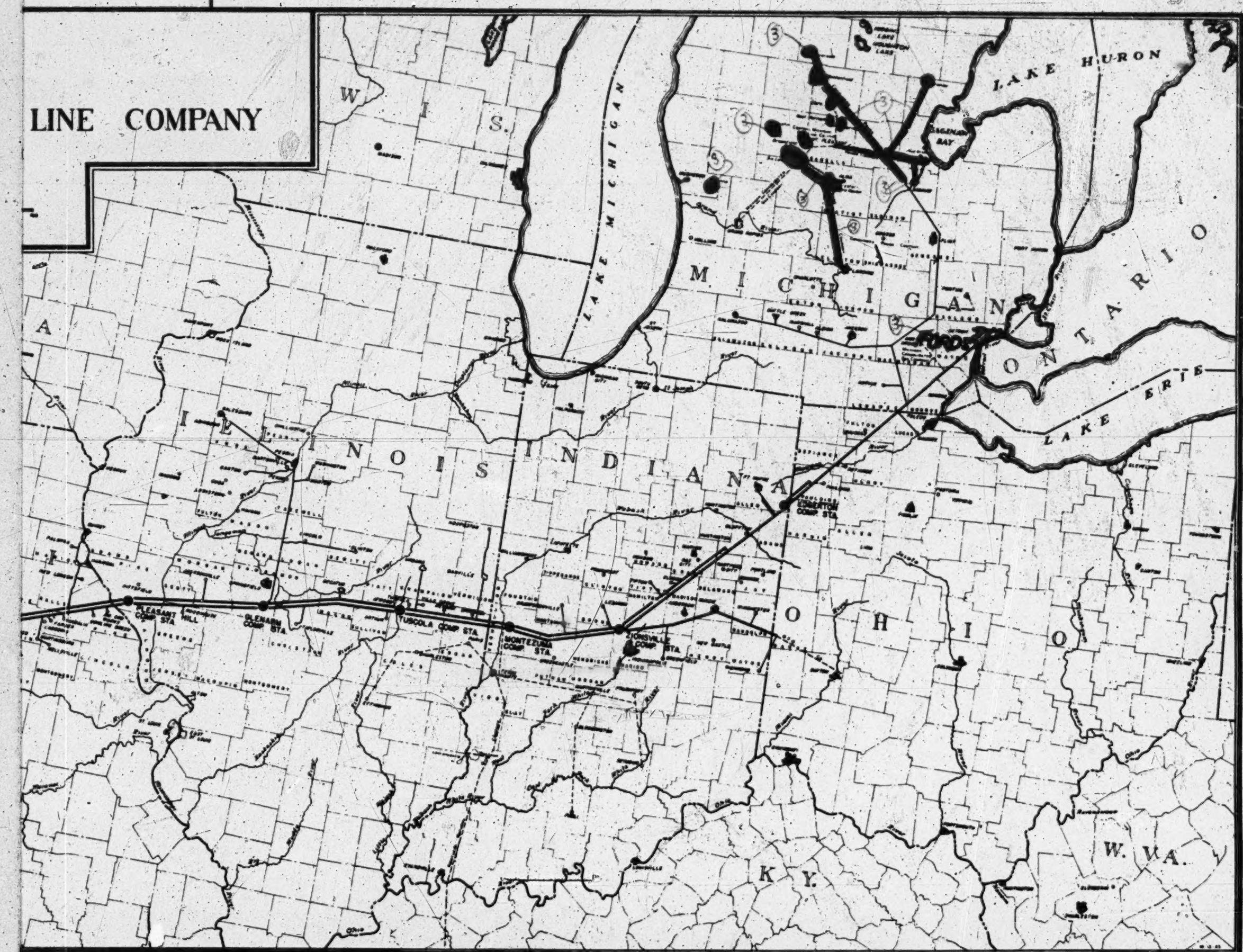
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356A

From Card 5



PIPELINES OF CONSUMERS POWER COMPANY

GAS FIELDS

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- 2 HUGOTON GAS FIELD
- 3 MICHIGAN GAS FIELDS

474a

356A  
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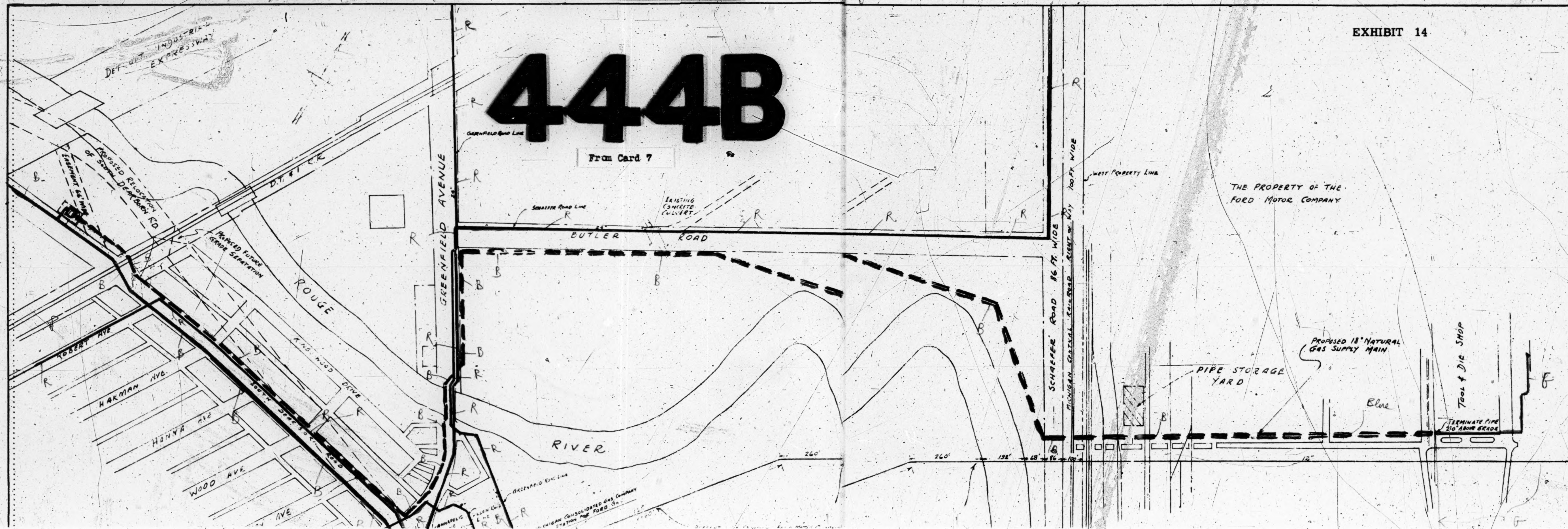
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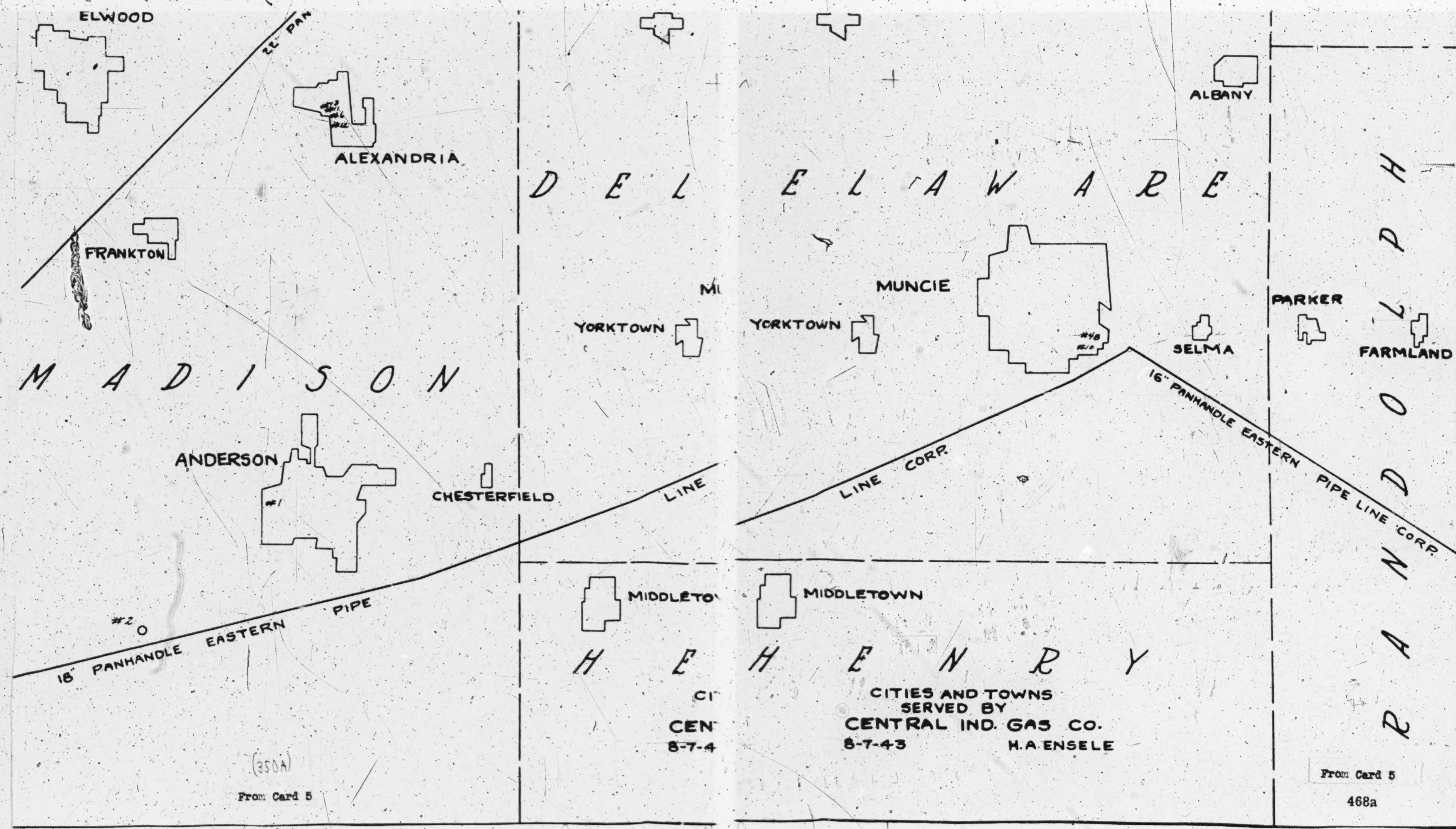
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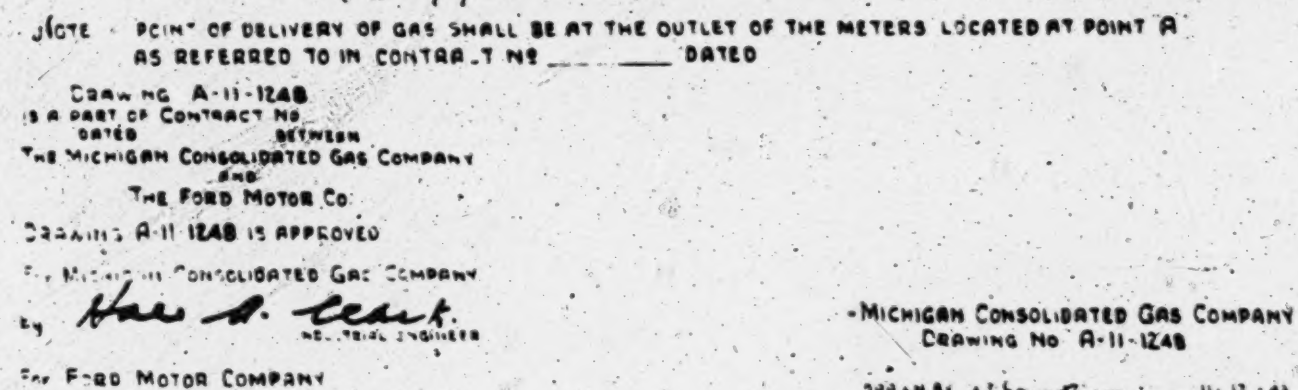








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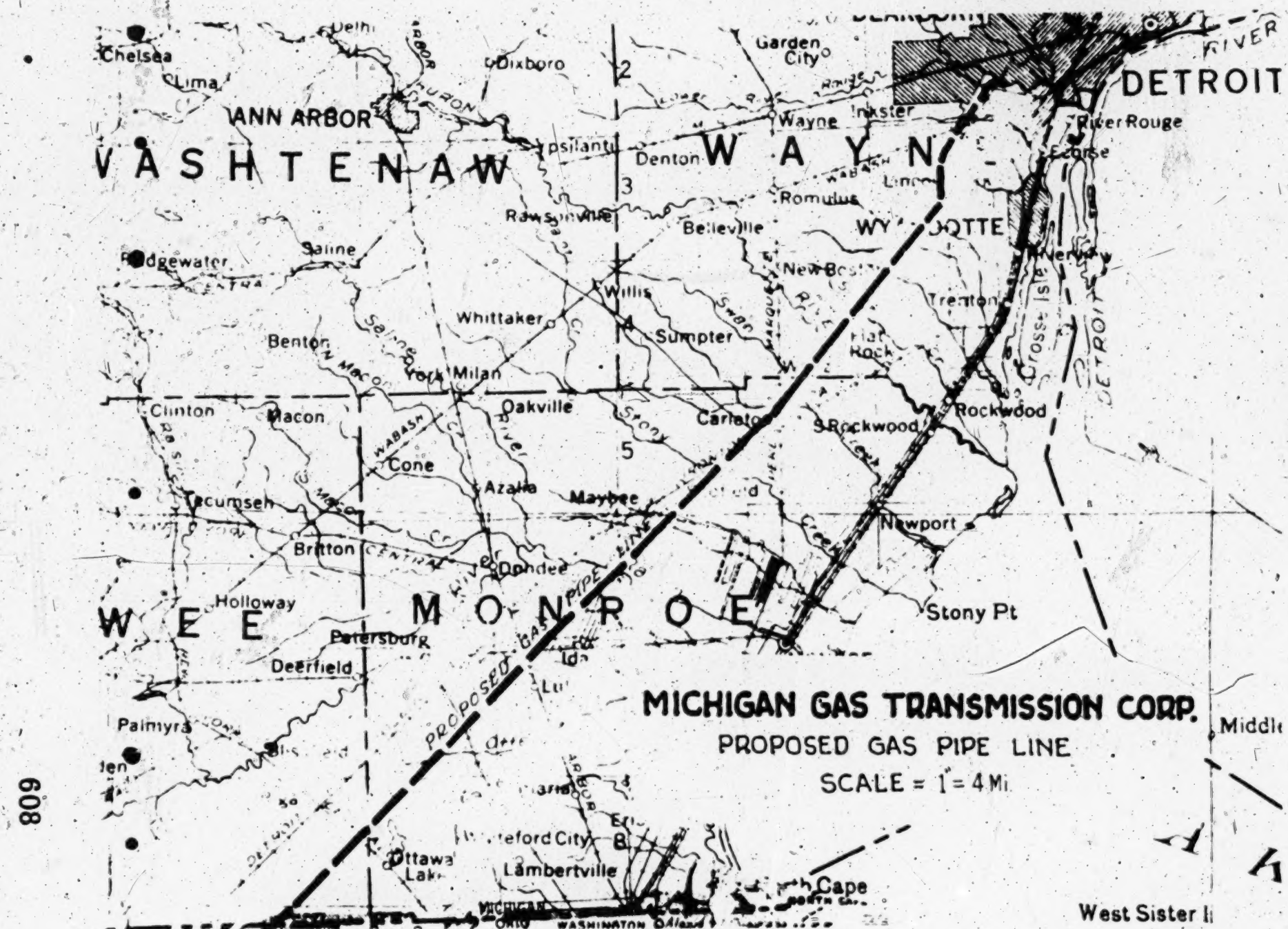
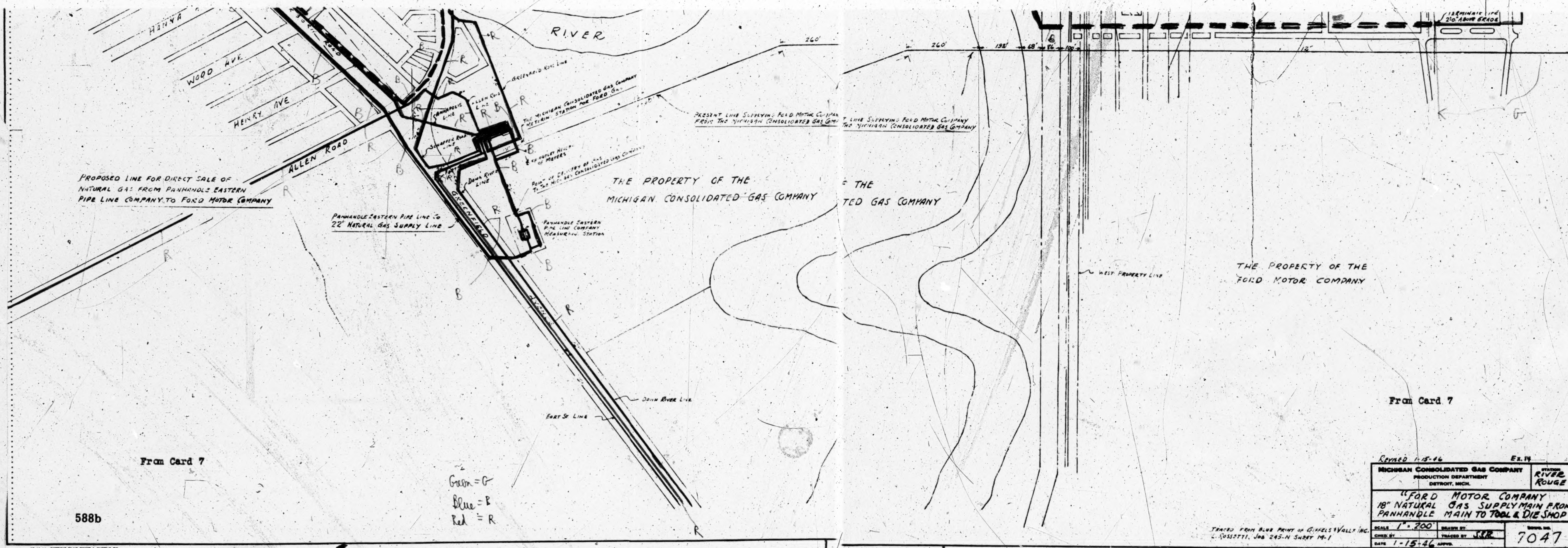


EXHIBIT 20





TRACED FROM BLUE PRINT OF CHAPPEL VALLEY, INC.  
L. ROSSETTI, JOB 245-N SHEET 19-1

REVISED 1-15-46		EX. 14
MICHIGAN CONSOLIDATED GAS COMPANY PRODUCTION DEPARTMENT DETROIT, MICH.		STATION RIVER ROUGE
"FORD MOTOR COMPANY 18" NATURAL GAS SUPPLY MAIN FROM PANHANDLE MAIN TO TOOL & DIE SHOP"		
SCALE 1" = 200'	DRAWN BY	DATE 1-15-46
CHECK BY	TRACED BY	DATE
		7047



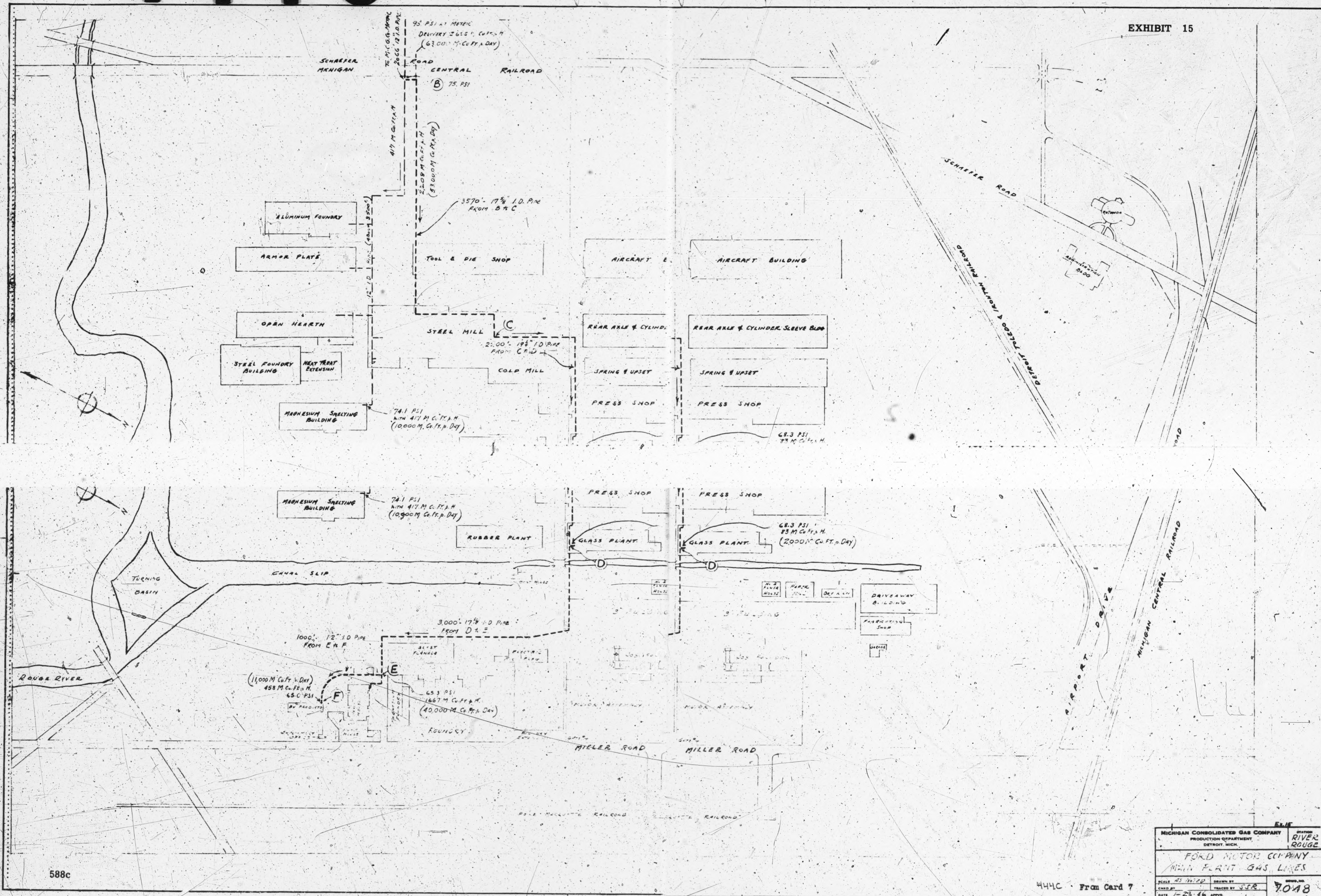
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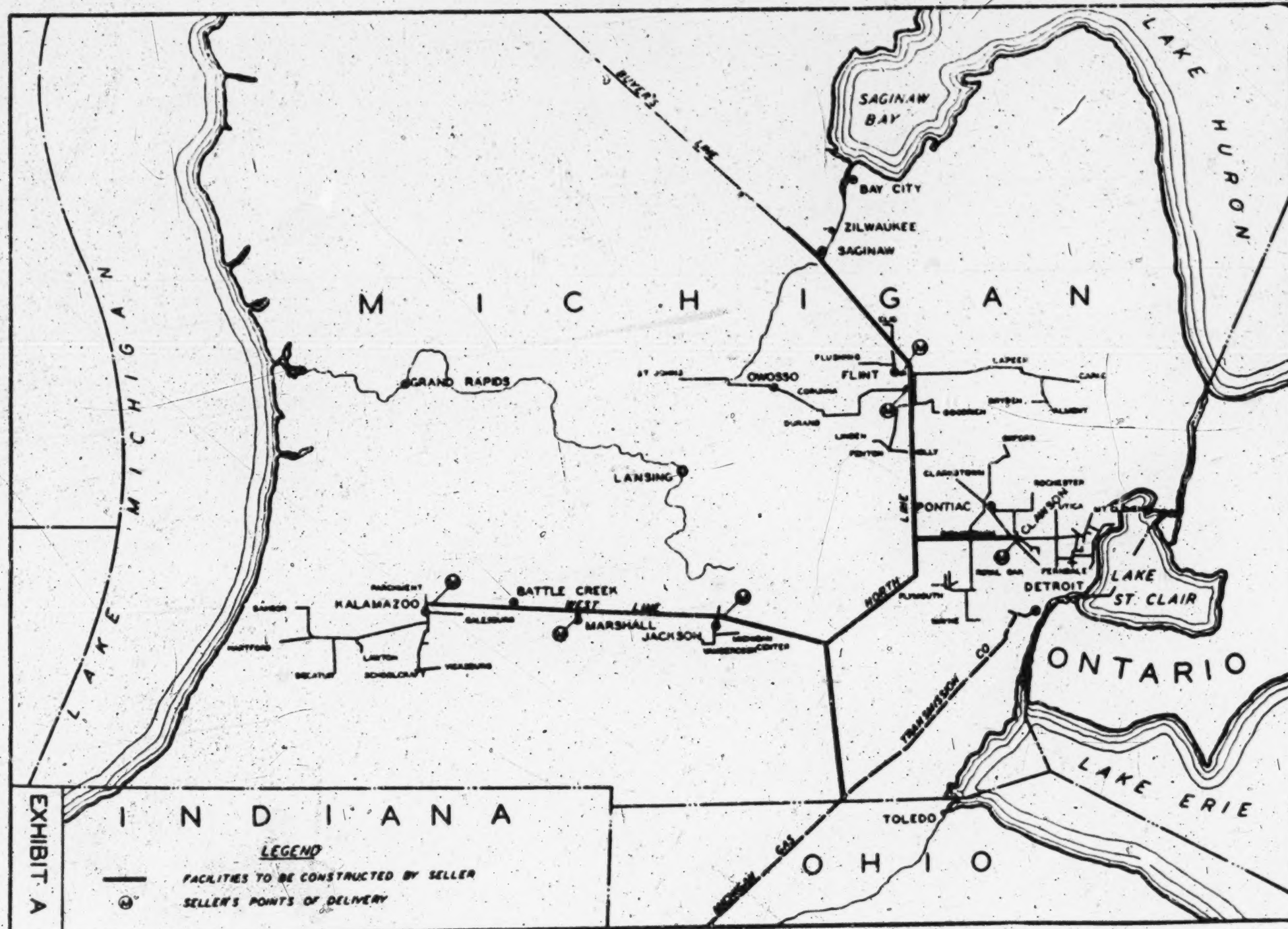
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EXHIBIT A

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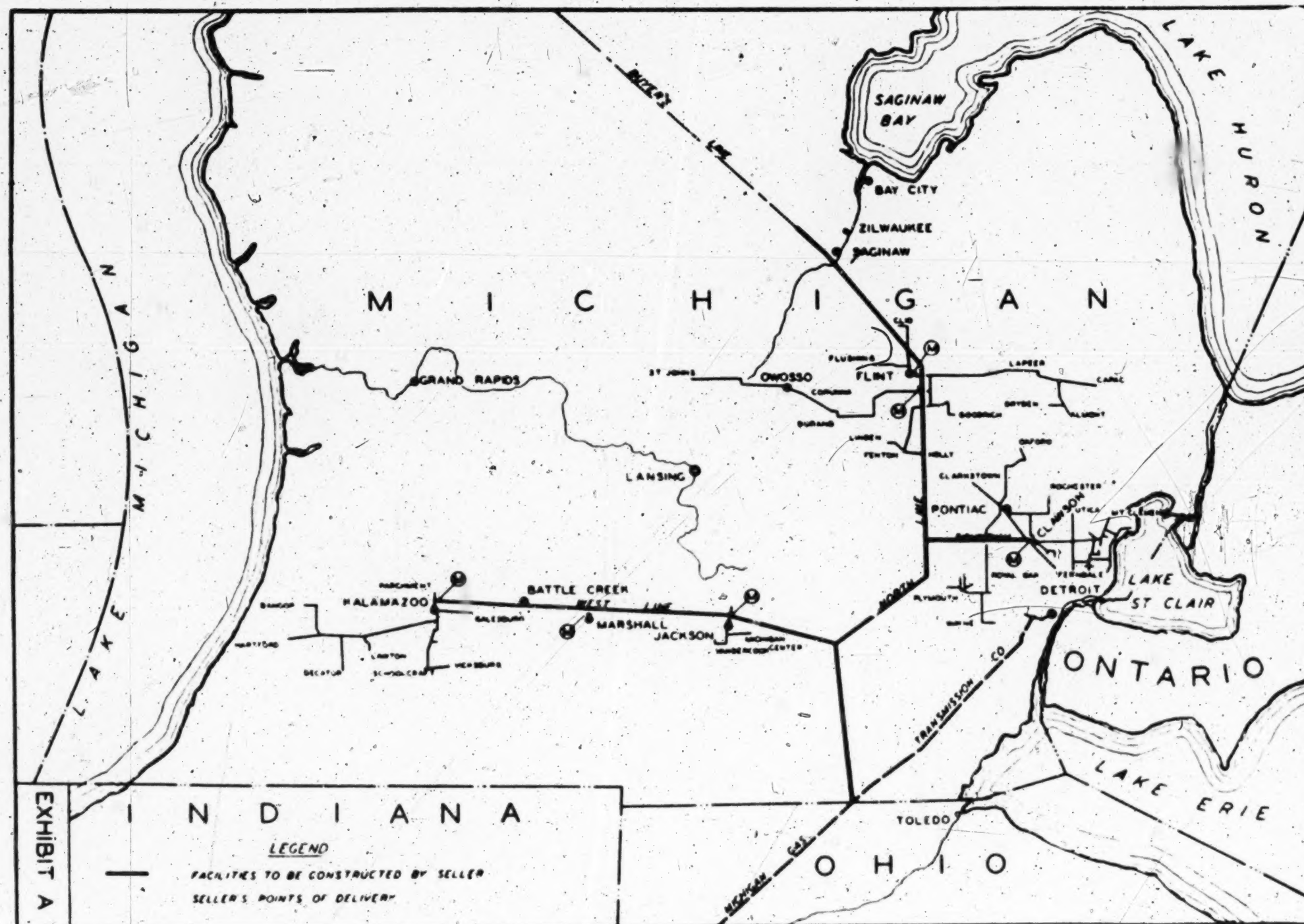


EXHIBIT 26

500 A

662

EXHIBIT A



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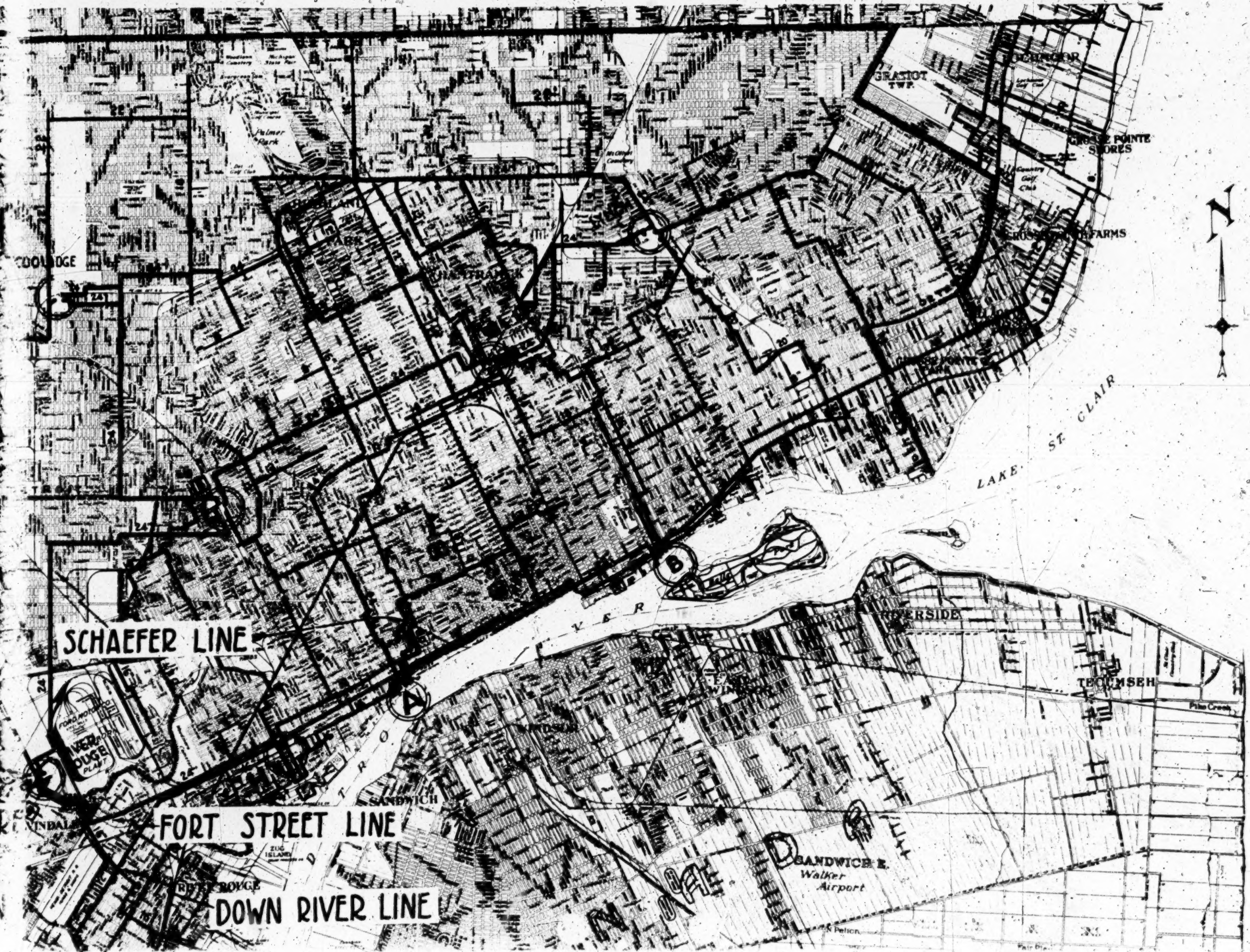
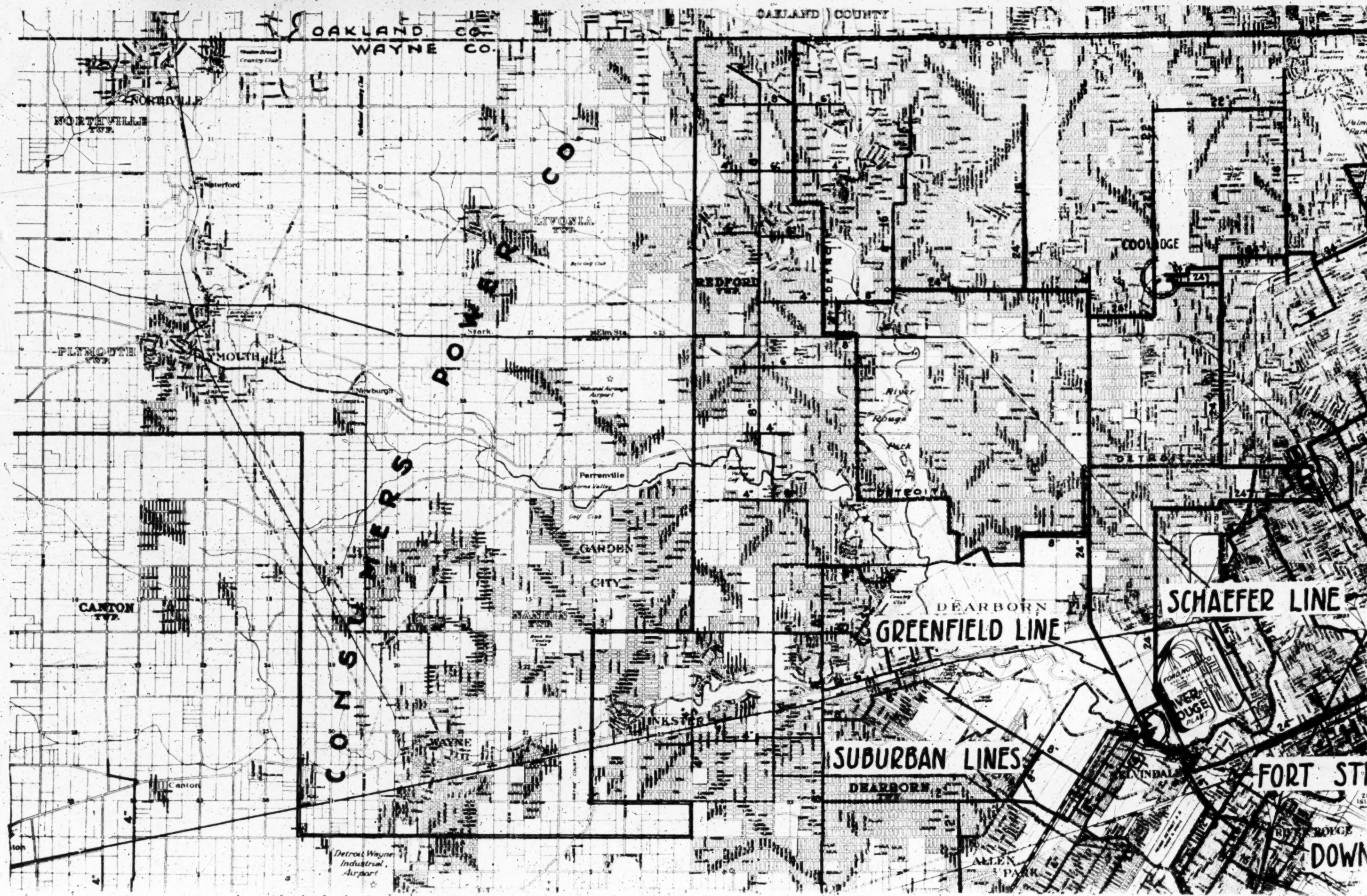
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EXHIBIT 43

EXHIBIT 43

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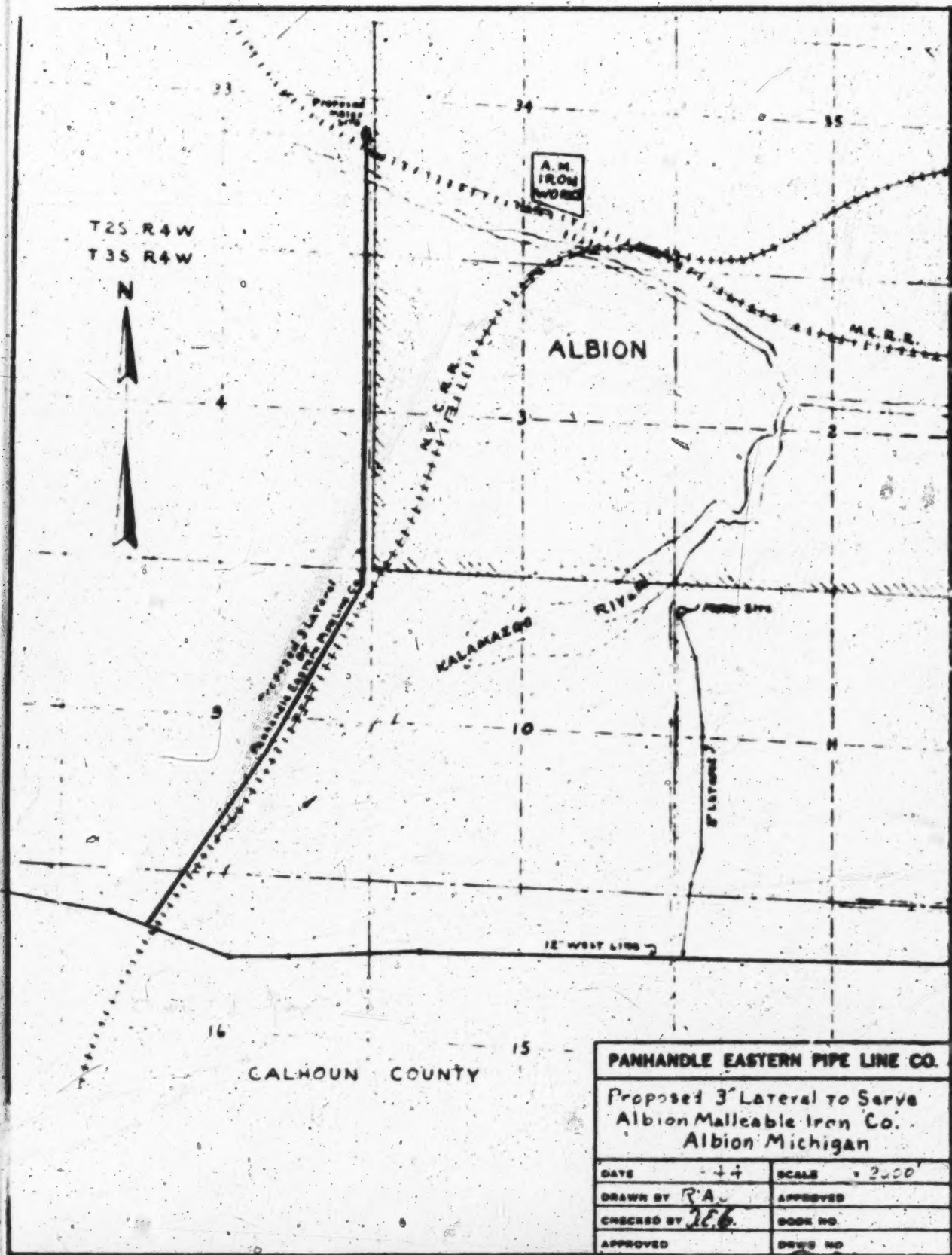


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